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ABHANDLUNGEN

HISTORISCHE PROBLEME DER GRIECHISCH-SIZILISCHEN NUMISMATIK

Josepho Vogt sexagenario

Die griechischen Münzen Siziliens sind zumeist unter ästhetischen und kunsthistorischen Aspekten gesammelt und durchforscht¹ worden. Dagegen liegen nur wenige umfassende Versuche vor, sie als historische Quelle auszuwerten. Nach der bis ins 18. Jahrhundert hinein maßgeblichen polyhistorischen Arbeitsmethode verwandte zuerst A. Holm in seiner Geschichte Siziliens² die Prägungen als „Commentar“ zur historischen Darstellung, indem er zum Ereignis den Ausdruck im Münzbild und zum Münzbild ein Ereignis suchte. Durch seine systematische Behandlung der direkten Bildaussage auf den Edelmetallprägungen ist der numismatische Teil seines Werks, von der Chronologie freilich abgesehen, heute noch ebenso nützlich wie Hills³ geistreicher Überblick. S. Mirone⁴ hat dann in einer umfangreichen Typensammlung einen Spezialkatalog jener sizilischen Münzbilder geschaffen, für die historische Interpretationsmöglichkeiten vermutet wurden.⁵ Einen ganz anderen Weg beschritt W. Giesecke.⁶ Sein Buch trägt wie selten eines den Stempel seiner Zeit (1923), der Zeit der Währungsmanipulationen, Krisen und Abwertungen. War früher der Aussagegehalt der Gewichtsrelationen, speziell der Kupferprägung, nicht hinreichend gewürdigt worden, so überspannte Giesecke zweifellos den Bogen, als er mit der Aushöhlung von Währungen und der Konstruktion von staatlich bewußt errichteten und erweiterten Währungsräumen im 4. und 3. Jahrhundert v. Chr. operierte. In der Auswertung der Hortstatistik, dem Verhältnis

¹ Von den Studien der letzten Jahre sind hervorzuheben G. E. Rizzo, *Monete greche della Sicilia*, Rom 1946 (zur unhaltbaren Chronologie W. Schwabacher, Schweiz. Mzbl. 1954, 47) und H. A. Cahn, *Die Münzen der sizilischen Stadt Naxos*, Basel 1944 (Basler Studien z. Kunstgeschichte II).

² A. Holm, *Geschichte Siziliens im Altertum III*, Leipzig 1898, 543—741.

³ G. F. Hill, *Coins of Ancient Sicily*, Westminster 1903.

⁴ S. Mirone, *Monnaies historiques de la Sicile antique*, Arethuse 1926/7, 67—91 und 101—128.

⁵ Eine breit angelegte, überwiegend historisch interpretierende Typenbeschreibung gab daneben für Agrigent M. C. Lanza, *Spiegazione storica delle monete di Agrigento*, Riv. It. Num. 1902, 439 ff.

⁶ W. Giesecke, *Sicilia Numismatica*, Leipzig 1923 — dazu Kubitschek, Num. Z. 1924, 123—130.

von Fundfrequenz und -radius der einzelnen Münzstätten, stieß dann Heichelheim¹ auch für den sizilisch-großgriechischen Raum neue Bahnen auf. Die von ihm geforderte Parallelarbeit zu Sture Bolins² Werk für die griechischen Münzschätze ist jedoch noch immer ein Desiderat.³ Es ist das Ziel dieser Ausführungen, die historischen Aussagemöglichkeiten der sizilischen Münzen in einigen Kernpunkten, insbesondere methodisch, zu überprüfen, sowohl in dem Interpretationsbereich der Münzbilder, wie auch in der Sichtung der Schatzfunde.

I. Zur historischen Aussage der Münzbilder

Wenn man von dem Sonderfall Dankle-Messana⁴ und der schrittweisen Entwicklung der Legende bei Agathokles⁵ absieht⁶, ging es in der Mehrzahl der für den Historiker bedeutsamen Spezialuntersuchungen um die Deutung der Münzbilder. Siege⁷, Bündnisse⁸, Städtegründungen⁹ und Erhebungen¹⁰ haben ihren Stempel auf den Geprägen hinterlassen in der Assoziation von Wappen und im festlich geschmückten Bild der Gottheit. Doch nicht immer sind die herkömmlichen Bilddeutungen gesichert. Das Reitermotiv auf den

¹ M. Heichelheim, Wirtschaftshistorische Beiträge zur klassischen griechischen und hellenistischen Münzhortstatistik, *IntNumCongr London 1936* (1938), 68—78.

² Sture Bolin, *Fyndnen av romerska mynt i det fria Germanien*, Lund 1926.

³ Knapp orientiert über die Spezialforschung des letzten Jahrzehnts G. K. Jenkins, *Greek Numismatics, Historia II* (1953) 214—226.

⁴ Die Auffassung von C. H. Dodd, *The Samians at Zancle-Messana*, *JHS* 1908, 56—76 von einer ursprünglichen Niederlassung der Samier in Rhegium ist durch E. S. G. Robinson, *Rhegion, Zancle-Messana and the Samians*, *JHS* 1946, 13—20 stringent widerlegt worden. Bei der historischen Schlüsselbedeutung der Prägung dieser Stadt bleibt es bedauerlich, daß H. E. Gielow, *Die Silberprägung von Dankle-Messana*, *MBayNumGes* 1930, 1—54 nur bis ca. 490 gedieh. Siehe auch S. 389 A. 6 und E. Gàbrici, *Le monete dei coloni di Samo a Zancle*, *Boll C Napol.* 1941, 1 f.

⁵ W. Giesecke, *Sicilia Numismatica*, Leipzig 1923, 89 nach F. Kenner, *Münzsammlung des Stiftes St. Florian*, Wien 1871, 14 ff.; Mirone, *Monnaies historiques*, 119 f.

⁶ Historisch bemerkenswert sind auch die Legenden ΕΚ ΚΕΦΑΛΟΙ[Δ]ΙΟ[Υ] — ΗΡΑΚΛΕΙΩΤΑΝ der Kleinsilbermünze Syll. Lloyd nr. 1000, die eine Siedlung Heraklea von früheren Einwohnern Cephaloediums nach der Vertreibung durch die Karthager zu bezeugen scheint.

⁷ Zusammenfassend Mirones Katalog, S. 72 ff., daneben J. Milne, *The History of the Greek Medallion*, *Stud. D. M. Robinson* 2, 1953, 224—232 und A. B. Brett, *Victory Issues of Syracuse after 413 BC*, *NumNotMon LXXV*, New York 1936. Für Abbildungen, auch zum Folgenden, sei verwiesen auf die Spezialsammlung C. A. Magnaguti, *Ex nummis historia I*, Rom 1949, Taf. 23—30.

⁸ Mirone, 82, 103, 115. Zum Kongress von Gela auch A. Headlam, *Some Notes on Sicilian Coins*, *Num Chron* 1908, 1 f.

⁹ G. E. Rizzo, *Saggi preliminari su l'arte della moneta nella Sicilia Greca*, Rom 1938, 60 f.

¹⁰ Zu der Zeus Eleutherios — Prägung Timoleons Mirone, 113 f. und E. Gàbrici, *Divagazione numismatiche*, *Boll C Napol.* 1952, 3—13.

Didrachmen von Gela¹, das seit Holm² allgemein als allegorische Darstellung des Kampfes der Reiterei Gelas gegen die athenischen Hopliten verstanden, durch Columba³ dann als Ausdruck innerer Kämpfe zwischen Aristokratie (Reiter ohne Schild) und Demos (gestürzter Reiter mit Schild) aufgefaßt wurde, ist von Rizzo⁴ unter Heranziehung archäologischen Vergleichsmaterials als Abbildung einer Kampfszene ohne Denkmalsanspruch eingeordnet worden. Auch die angebliche Darstellung der Rettungstat des Empedokles auf den Tetradrachmen von Selinunt⁵ wurde durch die Kritik Lloyds⁶ ihres legendären Charakters entkleidet. In ein weiteres Zentrum historischer Ausdeutung stieß J. Liegle.⁷ Sein Versuch, die Dekadrachmen von Syrakus aus ihrer seitherigen Position als Siegesprägung nach 412 v. Chr. zu reißen und die „Assinaria“ als moderne Geschichtslegende zu entlarven, fand zwar bisher keine Zustimmung. Liegles Neuansatz stehen stilistische Bedenken entgegen⁸, aber seine Untersuchung hat auch einwandfrei gezeigt, auf welcher schwachen Basis⁹ die vertraute Vorstellung der Assinaria-Festspiele beruht.

Lediglich im Fall der *Damareteien* ist die Verbindung eines Münzbildes mit einem historischen Ereignis auch literarisch gesichert.¹⁰ Aus der üblichen Deutung dieser frühen syrakusanischen Gepräge sei hier ein Punkt herausgegriffen: die Darstellung des Löwen. Er soll, wie Hill es nach Holm¹¹ formuliert hat, „the subdued and fleeing forces of Africa“¹² versinnbildlichen, die Carthago subjecta demonstrieren, gewissermaßen eine echt römische Darstellungsweise¹³

¹ Syll. Copenhagen nr. 280.

² A. Holm, Geschichte Siziliens im Altertum II, Leipzig 1898, 416; Mirone, 108.

³ G. Columba, *Satura Numismatica*, Atti e Mem Ist It Num V (1925), 34–45.

⁴ G. E. Rizzo, *I cavalieri di Gela*, Numismatica IV (1938) 93–98.

⁵ Syll. Cop. nr. 598 — Mirone, 83.

⁶ A. H. Lloyd, *The Coin Types of Selinus and the Legend of Empedocles*, Num Chron 1935, 73–93. Siehe auch den einschlägigen Abschnitt bei G. E. Rizzo, *Intermezzo*, Rom 1939.

⁷ J. Liegle, *Euainetos*, 101. Winckelmannsprogramm d. Archäol. Ges. Berlin, 1941, 30f.

⁸ Selbst in der sonst positiven Rezension von Heidenreich, N Jb f A 1942, 107 wurden sie aufgeworfen.

⁹ Plutarch, Nikias 28.

¹⁰ Diodor XI 26, 3. Hesychios (Hultsch, Scr. I, p. 316). Pollux IX 85 (Hultsch, Scr. I, p. 294). E. Boehringer, *Die Münzen von Syrakus*, Berlin—Leipzig 1929, 36, dort die ältere Literatur. Seither L. D. C., *A Demareteion*, Brit Mus Bull 1935, 51 f.; J. Tabrea, *Demareteion*, Cron Num Bucarest 1935, nr. 102; E. S. G. Robinson, *The Lloyd Collection of Coins of Western Greece*, Brit Mus Quart 1951, 14 f.; Milne, *History of the Greek Medallion*, 227.

¹¹ Holm, *Geschichte Siziliens* I, 416 und III, 570.

¹² G. F. Hill, *Coins of Ancient Sicily*, Westminster 1903, 55.

¹³ Zu den „...CAPTA“-prägungen P. Strack, *Untersuchungen zur römischen Reichsprägung des 2. Jahrhunderts*, I, Stuttgart 1931, 122. Gegen Strack und H. Nesselhauf, Tacitus und Domitian, *Hermes* 80 (1952) 241 wandten sich H. U. Instinsky, *Sicherheit als politisches Problem des römischen Kaisertums*, Deutsche Beitr. z. Altertumsw. 3 (1952) 38 A. 43 und H. Braunert, *Zum Chattenkriege Domitians*, BJbb 153 (1953) 101.

vorwegnehmen. Auch Boehringer ist, nicht ohne Zögern, dieser Interpretation gefolgt.¹

Besteht sie zu Recht? Ist die Darstellung des besiegtten Gegners im griechischen Münzbild dieser Zeit üblich?² Die Symbolisierung ein Gegenstück zur späteren römischen Personifikation? Ist eine Carthago subjecta auf einer Serie zu erwarten, für welche die Karthager selbst die Mittel geliefert hatten?³ Denkt man an die Prägung Athens, wo die Erfolge der Perserkriege in den drei Ölblättern am Helm der Athena,⁴ in einer Ausschmückung des kontinuierlichen Münzbildes also, ihren Niederschlag fanden und hält man sich die Art vor Augen, in der in den Persern des Aischylos der Gegner gesehen wird, in einer Tragödie zudem, die auch in Syrakus aufgeführt wurde,⁵ — so wird man gegen die geläufige Ausdeutung doch starke Bedenken haben. Es sollte auch berücksichtigt werden, daß die Darstellung des rechtshin eilenden, weit ausgreifenden Löwen nach Boehringers Forschungsergebnis schon vorher auf einer Vorderseite der Prägungen von Leontini⁶ auftritt. Daß aber gerade in dieser Stadt der Löwe einmal als Stadtwappen und gleichzeitig als Symbol des niedergeworfenen Gegners im Münzbild erscheinen soll, ist ausgeschlossen. Es bleibt keine andere Wahl, als den Löwen in jedem Falle auf das mit Syrakus verbündete Leontini zu beziehen. So entfällt auch die Schwierigkeit, daß von all den sizilischen Städten, die gegen Karthago verbündet waren, allein Syrakus und Leontini das angebliche Symbol der Carthago subjecta im Münzbild geführt hätten.

Wir wissen aus Diodor XI 26, daß Gelon nach dem Sieg über die Karthager Tempel für Demeter und Kore weihte und einen Votivdreifuß ins Apolloheiligtum zu Delphi stiftete. Simonides' Epigramm CXCVI bezieht sich darauf. Es ist weiterhin bekannt, daß Apollo die Hauptgottheit Leontinis war.⁷ Die Ausschmückung des festlichen Münzbildes durch ein der Stadtgottheit heiliges Tier ist sehr naheliegend.⁸ Seitdem H. A. Cahn in einer reich belegten Studie

¹ Boehringer, 91.

² Daß sowohl münz- wie geistesgeschichtliche Voraussetzungen für das klassische Griechenland völlig fehlen, geht auch hervor aus J. Babelon, *Le thème iconographique de la violence*, Stud. D. M. Robinson 2 (1953) 278 ff.

³ Diodor XI 26, 3.

⁴ H. Sorge, *Der Mond auf den Münzen von Athen*, Jb Num u G 2 (1950/1), 7 ff.; Seltman-Robinson, *A Note on the Survival of Ancient Coins*, Num Chron 1925, 121—125.

⁵ A. Schenk Graf v. Stauffenberg, *Dichtung und Staat in der antiken Welt*, München 1947, 44. Ders., *Pindar und Sizilien*, Hist. Jb. 74 (1955) 12—25.

⁶ a. O., 80 — Zum Löwentypus der Münzbilder K. Regling, *Über den Löwen als Münzbild vom 7. bis ins 4. Jahrh.*, AA 1920, 45—47; Steier, RE XIII 968—990 (1926); O. Keller, *Die antike Tierwelt I*, Leipzig 1909, 55. P. Marconi, *Griech. Löwenköpfe aus Sizilien*, Antike VI (1930) 179—201.

⁷ Aus dem Münzbild ergibt sich dies zweifelsfrei. Vgl. Syll. Cop. 334 ff. H. A. Cahn, *Die Löwen des Apollon*, Mus Helv 7 (1950) 192.

⁸ K. Regling, *Die antike Münze als Kunstwerk*, Berlin 1924, 15.

nachgewiesen hat, daß der Löwe Apolls „Begleiter von Anfang ist“,¹ sollte man die Deutung des Löwen „als das Symbol Libyens, über welches die Siegesgöttin im Triumphe hinwegfährt“² fallen lassen. Evans³ hat einst, ohne Nachfolge, den Löwen der Damareteien als „the symbolic animal of Apollo“ gefaßt. Nur diese, den Gestaltungsprinzipien griechischer Münzkunst gemäße Sinndeutung kann nunmehr als neu begründet und endgültig gesichert gelten.⁴

Für das Tetradrachmon von Aitne als Festprägung anlässlich der Umbenennung und Neubenennung der Stadt⁵ und für das Brüsseler Tetradrachmon von Zankle,⁶ eine „münzgewordene Episode sizilischer Revolutionsgeschichte“ — Ausdruck der Vertreibung der Dynastie des Anaxilas 461 v. Chr. — erscheinen die Ansätze fundiert, endgültig auch das Tetradrachmon von Naxos als Festmünze nach der Rückkehr der Bewohner.⁷ Gerade die Kontroverse um dieses Stück hat, gegen die isolierte Betrachtungsweise Rizzos,⁸ gelehrt, daß einschneidende chronologische Ansätze nur aus einer Gesamtuntersuchung der Stilentwicklung auf Grund der Stempelkoppelungen hervorgehen sollten.

In den genannten Beispielen ist die griechische Weise, Sieg und Festtag im Münzbild zu feiern, ausgedrückt in dem besonderen Schmuck und der demonstrativen Gestaltung der Götter.⁹ Daneben hat man immer wieder versucht, die verschiedentlich in den griechischen Münzbildern auftretenden Beizeichen wie Ketos,¹⁰ Zweig, Ölblatt, Waffen u. ähnl. mit bestimmten historischen Ereignissen zu kombinieren. Die Grenzen dieser Beizeichendeutung hat Boehringer's Monographie¹¹ aufgewiesen. Jedoch selbst die beiden von Boehringer als gesichert erachteten Bildbeziehungen (Ketos im Abschnitt anlässlich des Sieges über die Etrusker 474 bei Cumae; Sakkosbekränzung als Zeichen des Sieges über Duketios 451), die zu Fixpunkten in der Chronologie der syrakusanischen Prägung und damit stilistisch maßgebend wurden, fanden den ent-

¹ Cahn, 198 — Zu den dort aufgeführten Denkmälern auch Empedocles, frg. 127 und Aelian, n. h. XII 7.

² Hultsch, RE IV 2033 (1901).

³ A. J. Evans, Syracusan "Medallions" and their Engravers, Num Chron 1891, 332.

⁴ Daß der rechtshin gewandte Löwe ein beliebtes und auch in Sizilien bekanntes Dekorationsthema der protokorinthischen und korinthischen Vasenmalerei ist, darf dabei nicht übersehen werden. Vgl. H. Payne, Necrocorinthia, Oxford 1931, pl. 1, 6; 13 und J. Benson, Die Geschichte der korinthischen Vasen, Basel 1953, 133 ff.

⁵ G. E. Rizzo, Saggi preliminari su l'arte della moneta nella Sicilia greca, Rom 1938, 60 f.

⁶ H. E. Gielow, Zeus Eleutherios, D Jb Num 1940/1, 103—114 und J. Mertens, Le tétradrachme à légende ΔANKΛAION, Rev Belg Num 1947, 19—33.

⁷ H. A. Cahn, Die Münzen der sizilischen Stadt Naxos, Basel 1944, 47 f. Dort die Kontroversliteratur.

⁸ Rizzo, Saggi 65 f.

⁹ Vgl. S. 386 A. 10 und Ph. Lederer, La coniazione del bronzo della quarta repubblica di Siracusa, Numismatica 1938, 25 f.

¹⁰ V. Casagrandi, La pistrice sui primi tetradrammi di Catana, Catania 1914. Hierzu Kubitschek, Num Z 1914, 208.

¹¹ a. O. 91 f.

schiedenen Widerspruch von so erfahrenen Kennern wie K. Regling¹ und W. Schwabacher.² So beliebt historische Bezüge dieser Art sind, so selten sind sie fest begründet.³

II. Zur Aussage der sizilischen Münzhorte

Lassen wir die metrologischen,⁴ ikonographischen⁵ und topographischen⁶ Probleme ebenso beiseite wie die Fragen der Typenverbreitung⁷, so bietet sich uns als großer, noch teilweise ungenutzter Quellenbereich der Komplex der Schatzfunde an.⁸ Denn mit der von Heichelheim⁹ gewählten Methode ist erst

¹ Rezension *Gnomon* 1930, 632, 635.

² Besprechung *Z Num* 1930, 331.

³ Die Stelle, die auf den Münzen von Cumae das Ketos einnimmt, hatten vorher eine Wasserpflanze, ein gespannter Bogen, ein Getreidekorn, ein Fisch und eine Maus inne. Vgl. BMC nr. 2 ff. — Auch Gedankengänge, wie die von Schwabacher (*Festschrift G. Habich*, München 1928, 9), daß die Tetradrachmen von Selinunt mit Lorbeerkrantz ohne Conca auf den Sieg über Segesta 416 zu Lande, diejenigen mit Conca auf den Sieg zur See zu beziehen seien, liegen außerhalb des Wahrscheinlichen.

⁴ Die Relation zwischen römischem Denar und sizilischem Nomos überprüfte H. Mattingly, *The "Little" Talents of Sicily and the West*, *Num Chron* 1943, 14—20. J. G. Milne, *The Early Coinages of Sicily*, *Num Chron* 1938, 36—52 versuchte die Gewichts differenzen zwischen den einzelnen Münzfüßen durch die verschieden hohen Silbertransportkosten zu erklären. Allgemein E. Gàbrici, *La monetazione del bronzo nella Sicilia antica*, Palermo 1927, dazu Giesecke, *Num Literaturblatt* 1927, 2189—2193. Zum aes grave E. J. Haeberlin, *Per l'aes grave in Sicilia*, *Boll It Num* 1908, 19 f.

⁵ Behandelt bei S. Mirone, *Iconografia numismatica dei tiranni sicelioti*, *Riv It Num* 1921, 5—30 und G. E. Rizzo, *Il teatro greco di Siracusa*, Mailand—Rom 1923, 45 f.

⁶ G. Cavallaro, *Le monete degli Alesini Siculi e della Symmachia*, *Atti e Mem* 1934, 3—19 zur Lage von Alaesia und zur Interpretation von Diodor XIV 16, 1—4 und XXII 13, 1. S. Mirone, *Topografia e numismatica di Ibla Galeotis*, *Riv It Num* 1916, 435—449. S. Mirone, *Le monete di Longane o Longone*, *Riv It Num* 1916, 450—460. Zur Lokalisierung von Morgantine S. Mirone und A. Sambon, *Rev Num* 1917/8, 113—130. G. Cavallaro, *Mytistratum Sicana e le sue monete*, *Atti e Mem* 1932, 14—37. G. Cavallaro, *Note numismatico-topografiche Siciliane: Nacona*, *Boll. Num.* 1929, 2—4. G. Cavallaro, *Le monete di Piacos ed il suo sito*, *Annali* 1954, 21—24. S. Mirone, *Stiela, Topografia e numismatica*, *Z Num* 1928, 29—55.

⁷ Einschlägige Spezialstudien: E. J. Seltman, *The Influence of Agathocles on the Coinage of Magna Graecia*, *Num Chron* 1912, 1—13; J. Amorós, *Las dracmes empuritanes*, Barcelona 1933 und ders., *Las monedas empuritanes anteriores a las dracmes*, Barcelona 1934 (wo die Typenverwandtschaft zwischen Emporion und Syrakus im 4. Jahrh. v. Chr. besonders herausgearbeitet wurde) und A. Blanchet, *L'influence de la Sicile sur Massalia*, *Rec. Mem. Soc. Antiqu.* 1904, 65—71.

⁸ Zur Methodik S. P. Noe, *Hoard Evidence and its Importance*, *Hesperia Suppl.* 8 (1949) 235—242; ders., *Coin Hoards*, *Num Not Mon* I, New York 1920; B. Thordeman, *The Lohe Hoard, a Contribution to the Methodology of Numismatics*, *Num Chron* 1948, 188—204; W. Hävernicks, *Zum wirtschaftsgeschichtlichen Quellenwert der Münzfunde*, *Nord Num Unions Medl* 1954, 157 f.; F. Mateu y Llopis, *Rapport sur les trouvailles monétaires*, *Congrès Int Num Paris* 1953, I, 161—170; J. Werner, *Münzschatze als Quelle historischer Erkenntnis*, *Jb Num u G* 2 (1950/1) 137.

⁹ S. S. 386, A. 1.

eine Seite der Horte untersucht.¹ Der Aussagegehalt der Funde für die inner-sizilischen Verhältnisse, für den Währungsumlauf und damit indirekt für die wirtschaftlichen Größenverhältnisse und Wechselbeziehungen innerhalb Siziliens läßt sich noch präzisieren, vor allem dann, wenn man neben den Hortfrequenzwerten auch den Umfang der jeweiligen Beteiligung mitberücksichtigt. „Auf dem wundersamen Punkte, wohin so viele Radian der Weltgeschichte gerichtet sind,“² ist die Bedeutung dieser Fragen evident.

Die besonderen Verhältnisse Siziliens erfordern dabei die offene Erwägung der Prämisse, nämlich der Zeugniskraft der uns heute vorliegenden Fundnachrichten. Unter 110 in der Forschung bekannten Münzschätzen³ aus Sizilien sind nur verschwindend wenige geschlossene Komplexe (gesichert Nr. 35 und 68 der Tabelle), d. h. Funde, die intakt bearbeitet und publiziert werden konnten. Die Regel ist also, daß von einem Fund stets nur größere oder, wie leider in der Mehrzahl der Fälle, kleinere Bruchteile in die Hände der Bearbeiter gelangten.⁴ Es darf weiterhin nicht übersehen werden, daß die so publizierten Funde ihrerseits wiederum nur einen Teil der Gesamtfunde ausmachen. Trotzdem glaube ich, daß die Zusammenfassung dieser Rumpffunde ein annähernd richtiges Bild des Währungsumlaufs ergeben kann. In der beigegefügt Tabelle sind die sizilischen Münzschätze chronologisch gruppiert und nach Münzreihen aufgeschlüsselt. Wo irgend möglich wurde dabei auf die primären Fundmeldungen zurückgegriffen. Auch dabei ist jedoch der Bearbeiter von den Bestimmungen der Nachrichten abhängig. Ausgeschieden wurden die nicht näher fixierten oder ungenau mitgeteilten Funde,⁵ ebenso die isolierten Rohkupferfunde.⁶ Bei der zur Genüge betonten Eigenart des Fundbestandes verbietet sich ein Überbeanspruchen aller Zahlen von selbst. Sie ergeben lediglich Verhältniswerte für die Anteile der einzelnen Prägungen am Fundvolumen, doch mit dieser Einschränkung sicherlich ein Abbild der lokalen Währungsdecke.

¹ Die historische Interpretation von Einzelfunden bleibt daneben stets prekär. J. Sanchez, *Tetradracma del Llano de la Consolacion* (Albacete), *Cron. IV Congr. Arqu. Sudeste Esp.*, Elche 1948, 261—266 vermutet beispielsweise, das a. O. gefundene Tetradrachmon von Camarina sei durch Söldner, die in den Karthagerkämpfen in Sizilien fochten, nach SO-Spanien gekommen. Besser begründet sind die Schlüsse von J. G. Milne, *Finds of Greek coins in the British Islands*, Oxford 1948.

² Goethe, *Ital. Reise*, Neapel 26. 3. 1787, *Sophienausg.* 31, 75.

³ S. P. Noe, *A Bibliography of Greek Coin Hoards*, *Num Not Mon* 78, New York 1937² hatte insgesamt 94 sizilische Münzschätze aufgeführt. Dazu kamen seither weitere 16.

⁴ P. Orsi, *Di un insigne tesoretto di aurei Persiani e Siracusani rinvenuti ad Avola* (Sicilia), *Atti e Mem* 1917, 5 f.; S. L. Cesano, *Il medagliere del Museo Archeologico di Siracusa*, *Studi di Num* 1940, 61 f.

⁵ Noe (stets 2. Aufl.) nr. 21, 160, 409, 432, 618, 912, 913, 946, 948, 951, 952, 976. Gela (1934) siehe Cesano, 63.

⁶ Erfaßt und ausgewertet durch H. Willers, *Das Rohkupfer als Geld der Italiker*, *Z Num* 1924, 256 f. und P. Orsi, *Ripostigli di bronzi siculi*, *Bull. Paletnologia It.* 26 (1900) 164—174 und 267—285. Noe nr. 452.

Auch für die Datierung kann nicht in jedem Falle eine präzise Jahresangabe gemacht werden, andererseits meist eine begründete Zuweisung in bestimmte Zeitabschnitte, wobei dem Zeugnis des Gesamtbestands höhere Wertigkeit zukommt als isolierten Schlußmünzen¹. Jedenfalls lehrt ein Blick auf die chronologisch angeordnete Tabelle, daß die Synopsis der aufgeschlüsselten Funde kein wirres Spiel des Zufalls, sondern einige klare Grundlinien und Entwicklungen enthüllt. Wir fassen sie für die einzelnen Perioden zusammen.

Bis zum Ende des 5. Jahrhunderts v. Chr. dominieren in den Schatzfunden — und damit im Geldumlauf² Siziliens — die relativ wenigen, starken Reihen der größeren sizilischen Städte, die Serien von Syrakus, Agrigent, Gela, Himera, Dankle-Messana und Selinunt. Für den Umlauf ist bemerkenswert der hohe Prozentsatz von Didrachmen, die hauptsächlich aus Agrigent, Gela und Selinunt stammten. Auf Grund der Lagebeziehungen und des politischen Einflusses sind von Anfang an Münzen von Rhegium in den Horten enthalten. Von den Prägungen der griechischen Städte trifft man in größerem Ausmaß Exemplare aus Athen, in geringerem solche aus Acanthus³ und Samos. Sowohl die verhältnismäßig geringe Anzahl der Horte wie das eindeutige Übergewicht der einheimischen Gepräge dokumentieren überzeugend die volle wirtschaftliche Blüte und die rasche Entfaltung der sizilischen Kräfte in dieser Zeit.⁴

In den bewegten Jahrzehnten *um die Wende des 5. zum 4. Jahrhunderts* ändert sich dieses Bild. Charakteristisch wird nun die Vielzahl sizilischer Münzreihen, deren Zirkulationsgebiet durchaus nicht lokal begrenzt war⁵ (auch nicht für die kleineren Nominale! Vgl. nr. 15), wie etwa das Auftreten der Münzen von Eryx in den Funden von Schisò (nr. 17) und Contessa (nr. 33) bezeugt. Der Hort von Catania (nr. 23) ist ein schöner Beweis für das von

¹ Die anfängliche Spätdatierung (311 v. Chr.) des Fundes nr. 38 der Tabelle nach der isolierten vermeintlichen Schlußmünze aus Ambracia (Ravel nr. 113) ist dafür ein Beispiel.

² Dabei kann für den Anfang eine Unterteilung der Schätze in die von Evans, Syracusan "Medallions" and their Engravers, Num Chron 1891, 230 aufgestellten Kategorien der durch einen zufälligen Bestand am Vergrabungstag bedingten und der planmäßig durch lange Zeit hin angehäuften Horte unterbleiben.

³ Die Rolle der Prägungen dieser Stadt im östlichen Mittelmeer schildert F. M. Heichelheim, Wirtschaftsgeschichte des Altertums I, Leiden 1938, 298.

⁴ Zur Interpretation der einzelnen Schätze: E. Babelon, Rev Num 1894, 281 bringt den Hort nr. 2 = Noe 685 in Zusammenhang mit dem Reiseweg der samischen Kolonisten. Den Anlaß zu nr. 3 = Noe 686 bildete die Eroberung von Dankle durch die Samier. Vgl. H. A. Cahn, Die Münzen der sizilischen Stadt Naxos, Basel 1944, 36. Den Komplex von nr. 12 = Noe 953 deutete Lloyd, A Recent Find of Sicilian Coins, Num Chron 1925, 277 als Kasse eines Wechslers, in der sich die Seehandelsbeziehungen zwischen Agrigent, Gela, Syrakus und Selinunt widerspiegeln, vergraben in einem Krieg zwischen Selinunt und Segesta 454 unter Hinweis auf IG XIV, 268.

⁵ Die Streuweite der sizilischen Münzen umriß Heichelheim, Wirtschaftsgeschichte I, 302f.

¹⁾ So der Ansatz *Nel. Scav.* 1934, 70 auf Grund der Schlußfolgerungen. Die Zusammensetzung des Fundes legt ein erheblich späteres Datum im Zusammenhang mit den Kämpfen unter Pyrrhus 279—275 v. Chr. nahe.

Erläuterung: Zahlen ohne nachgestellten Buchstaben bezeichnen Tetradrachmen, Zahlen und nicht spezifizierte Silberminale bezeichnen Silberminale

a	=	Didrachmen
b	=	Didrachmen
c	=	Drachmen
d	=	Halbdrachmen
z	=	unbenannte Anzahl
l	=	Leitrae
k	=	Kupfer
h	=	Silber
n	=	Gold
el	=	Elektron

Lederer¹ aufgezeigte kollaterale System der sizilischen Goldwährung. Nach wie vor ist Athen in den Komplexen enthalten — wobei die Auswirkung der athenischen Expedition zu berücksichtigen bleibt² —, doch erheblicher wurde schon Anfang des 4. Jahrhunderts Korinths Einfluß. In dem Fund von Avola-Mammanelli (nr. 20) wird die „Weltwährung“³ der Dareiken erstmals in Sizilien faßbar, in erstaunlich hohem Anteil. Schärfsten Kontrast dazu bildet die amorphe Bronze aus dem Kupferhort von Milocca-Caltanissetta (nr. 19). Gerade in diesen beiden gleichzeitigen Funden ist die weltoffene Wirtschaftslandschaft der Küstenstriche von der abgeschlossenen des Innern⁴ eindrucksvoll abgehoben.

Die Verhältnisse des 4. *Jahrhunderts* sind gekennzeichnet durch das eindeutige Überwiegen der Prägungen Korinths und seiner Kolonien.⁵ Von letzteren liegt Leucas weitaus an der Spitze. Die Anteile aller sizilischen Städte schrumpften demgegenüber zusammen. Seit der Jahrhundertwende haben sich auch die siculo-punischen Prägungen⁶ durchgesetzt, an ihrer Seite zirkuliert karthagisches Elektrum. Die Kyzikener hatten die Trinacria dagegen nicht mehr erreicht.⁷ Athens Fundanteil ist bedeutungslos geworden, auch auf Philipps und Alexanders Münzen stößt man nur vereinzelt. Da die sizilische Geldwirtschaft ein Verrufen älterer Sorten nicht kannte, sind besonders die Schätze des 4. Jahrhunderts eine eindrucksvolle Illustration des Greshamschen Gesetzes⁸ und der Auswahl und Umlaufkontinuität guter Währungen. So bleiben in dem Contessa-Fund (nr. 33) archaische Drachmen Athens mit syrakusanischen Dekadrachmen und siculo-punischen Tetradrachmen vergesellschaftet, der Schatz von Leonforte (nr. 36) enthält gleichfalls ältere Bestandteile. Auch an der Seite der Statere Korinths und seiner Kolonien finden sich immer wieder ältere syrakusanische Tetra- und Dekadrachmen (nr. 36, 40, 64), ja selbst mit Münzen des Agathokles sind Athener und Syrakusaner des 5. Jahrhunderts zusammen gehortet (nr. 69).

¹ Ph. Lederer, Neue Beiträge zur antiken Münzkunde aus Schweizerischen öffentlichen und privaten Sammlungen II, Schweiz. Num. Rundschau 1946, 17 f.

² P. Orsi, Not. Scav. 1891, 345 vermutet in dem Schatz von Avola (nr. 16) einen Teil der Kriegskasse der Athener (Thuk. VII 81).

³ Heichelheim, Wirtschaftsgeschichte I, 295 f. — Daß die Dareiken dagegen einen direkten persisch-sizilischen Handel nicht zu belegen brauchen, hat P. Orsi, Atti e Mem 1917, 26 f. mit Recht betont.

⁴ Vgl. H. Willers, Das Rohkupfer als Geld der Italiker, Z Num 1924, 256 f. F. Altheim, The first Roman silver coinage, Int Num Congr 1936, (1938) 140.

⁵ Evans, Syracusan "Medallions" and their Engravers, Num Chron 1891, 355; ders., Contributions to Sicilian Numismatics, Num Chron 1894, 217.

⁶ A. Zograph, Pegasos Staters from a Sicilian Hoard found in the Past Century, Num Chron 1928, 116. — Umfassend behandelte die siculo-punischen Serien jüngst G. Cavallaro, Panormos preromana, Arch. stor. Sicil. 1950, 84—124.

⁷ Heichelheim, Wirtschaftsgeschichte I, 298.

⁸ S. P. Noe, Coin Hoards, Num Not Mon I, New York 1920, 5.

Schlagartig endet der korinthische Einfluß dann im 3. *Jahrhundert*. Dafür, „daß die Zerstörung Korinths durch Rom nicht nur aus politischen Gründen, sondern auch zusätzlich infolge seiner lästigen Fernhandelskonkurrenz (besonders in Sizilien) erfolgt ist“¹ spricht absolut nichts, „der Befund der Münzhorte“, auf welchen Heichelheim verwies, vielmehr eindeutig dagegen! Auch im 3. Jahrhundert sind die hellenistischen Reichsprägungen in Sizilien nicht sehr zahlreich vertreten. Rasch schwillt jedoch gegen Ende des Jahrhunderts der römische Anteil an. Sextantaluncien und Quadrigaten kursieren an der Seite der Münzen Hierons II. und Hieronymus'.² Damit hat eine Entwicklung eingesetzt, die dahin führen wird, daß „utuntur omnes uno genere nummorum“.³ Für die Frage der Denardatierung⁴ bleibt gerade der Ausweis dieser Funde von hohem Rang. In Sizilien selbst ist im 3. Jahrhundert die Münzprägung in Syrakus zentralisiert. Ungebrochen fließt ihr Strom, bis die Schätze des Jahres 212 (nr. 86—88) das Ende der syrakusanischen Königsmacht ankündigen.

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THE MURDER OF HIPPARCHUS

Thucydides (vi. 54ff.) is the first to give a detailed story of the tyrannicides. He introduces it with the statement (vi. 53. 3) that the people know that the tyranny of Peisistratus and his sons came to an end after becoming harsh and that it was ended not by themselves and Harmodius but by the Spartans. We must assume, until some certain reason for doubting can be shown, that Thucydides knew the state of the Athenians' knowledge. How they knew what they knew we can only conjecture, but popular oral tradition seems the most prob-

¹ Heichelheim, *Wirtschaftsgeschichte* I, 423 — Siehe dagegen die allgemeinen Feststellungen von M. Rostovtzeff, *The Social and Economic History of the Hellenistic World*, Oxford 1941, II, 739 und III, 1466.

² nr. 88, 91, 85, 93.

³ Cic. Verr. 3, 181 — Zum Beginn der römischen Prägungen in Sizilien L. Breglia, *Spunti di politica monetale Romana in Sicilia*, Rend. Ac. Archeol. Neapel 1949/50, 3ff. und P. Bonazzi, *Le prime monete Romane di bronzo coniate in Sicilia*, Riv. It. Num. 1922, 5—26. E. Gàbrici, *La riconiazione del bronzo studiata in rapporto con la riduzione dell' asse nell' Italia e nella Sicilia*, Boll. C. Napoli 1947/8, 28—52.

⁴ Sie kann hier nicht eingehender erörtert werden. Es sei verwiesen auf H. Mattingly, *The First Age of Roman Coinage*, JRS 1945, 65ff.; L. Breglia, *La prima fase della coniazione Romana dell' argento*, Rom 1952. Siehe auch Le Gentilhomme, *Les Quadrigati nummi et le dieu Janus*, Rev. Num. 1934, 5f. und H. Willers, *Ein neuer Kämmerereibericht aus Tauro-menion*, Rh. Mus. 1905, 359. Eine weitere Basis zeigt Ch. A. Hersch, *Overstrikes as Evidence for the History of Roman Republican Coinage*, NumChron 1953, 33—68.

able source. Thucydides asserts, moreover, that it was this knowledge that made the Athenians suspicious of everyone in connection with the Hermecopeia and the affair of the mysteries. And here we must ask why. Why should the knowledge that 'the tyrants were not destroyed by the Athenians themselves and Harmodius' cause the Athenians to leave no stone unturned in the pursuit and discovery of those who defaced herms and parodied the mysteries? Because, as Thucydides states in resuming the narrative after the digression (vi. 60. 1), all these things (the impieties) seemed to them to have been done in connection with an oligarchic and tyrannic conspiracy. For the Athenian people the impious ones of 415 B.C. found their closest parallel in Peisistratus and his sons. And since they knew that their ancestors and Harmodius failed to destroy those ancient tyrants, that the ancient tyranny had become harsh before it was ended, and that it was ended only by the intervention of the Spartans, they feared greatly that they themselves might not be able to destroy these new tyrants, that their tyranny might increase, and that it could be ended only by the Spartans.

The Athenians' 'knowledge' of the tyrannicides' action was such that they could compare their present activities in combating their impious contemporaries with the action of Harmodius and Aristogeiton. For this comparison to be possible their information concerning that ancient attack on tyranny must have included the notion that Hipparchus was tyrant (either a tyrant or the tyrant), that the attack on him was an attack on tyranny to free Athens, and that the tyranny, like the events in 415 B.C., was violent, impious, illegal and burdensome. So much the Athenian people must have 'known' in order to justify their comparison between the impious ones of 415 B.C. and the tyrants of the previous century and thus to make them fear that their failure to destroy every vestige of contemporary tyranny would result in its increase and finally in Spartan intervention.

We can go beyond this and add a further item of 'knowledge' which they must have had in order to complete the comparison, justify their fear and suspicion, and explain the continuance and increase of the ancient tyranny: they must have known that, after the death of the tyrant Hipparchus, his brother Hippias continued the tyranny. This, then, is the 'knowledge' about the tyrannicides' action and its results which is both stated by Thucydides and essential in creating the fearful state of mind attributed by him to the Athenians in 415 B.C. It is this same 'knowledge' which appears in a variety of popular expressions throughout the fifth century. Statues of the tyrannicides were set up in the Agora not once but twice;¹ on the base a dedicatory epigram

¹ Paus. i. 8. 5; Arrian, *Anab.* iii. 16. 8; Pliny, *N.H.* 34. 17; *Marm. Par.* 70. According to Pliny (*l.c.*) and Aristot. *Rhet.* 1368a 17 these were the first men whose statues were set up in the Agora. And for a long time there was express prohibition against any other statues of men being set up beside these (*I. G.* II—III² 450 and 646).

celebrated their action as a blow struck for Athens' freedom;¹ and in addition to other marks of favor offerings were made to them as heroes by the polemarch.² Vase-representations both of the heroes at the moment of the deed and of their statues³ seem also to reflect the patriotic fervor inspired by Harmodius and Aristogeiton. The Attic skolia in honor of Harmodius and Aristogeiton⁴ explicitly give to the tyrannicides credit for slaying the tyrant and making Athens free. All this glorification suggests that the tyrannicides' action was thought of as political action and that the murder of Hipparchus was regarded as the murder of a tyrant. This was the 'knowledge' which found expression in art and poetry from a time not long after the deed itself, as is suggested even by Bowra⁵ who considers it to be Alcmaeonid propaganda.

It is this 'knowledge' that we find corrected not only by Thucydides but also by Herodotus, at least in part. Herodotus implicitly denies that Hipparchus was *the* tyrant (v. 55) by identifying him as the brother of the tyrant Hippias. Even if this correction, which also has Thucydides' weight behind it, is justified, it is nevertheless possible to show that the original mistake which made Hipparchus *the* tyrant was both completely natural and understandable. As we know from Thucydides himself, who is insistent that Hipparchus was not *the* tyrant, all or most of the Peisistratids shared in the tyranny (vi. 54.5—6) and Hipparchus himself had some power.⁶ Hipparchus then was *a* tyrant;⁷ being killed as *a* tyrant (*i.e.* the attack was a political one), and suffering the blow which was struck for freedom, he became *the* tyrant who was destroyed so that Athens might be free, except that another tyrant sprang up in his place.

¹ Meritt (*Hesperia* V, 1936, pp. 355 ff.) identifies the remains of the dedicatory epigram with the pseudo-Simonidean epigram partly quoted in Hephaestion's *Enchiridion*. Cf. also P. Friedländer, *Epigrammata* (University of California, 1948) no. 150.

² *Ar. Ath. Pol.* 58; Pollux viii. 91. An interesting parallel may be found in Teian Abdera, where the people paid heroic honors to the Clazomenian Timesias (Hdt. i. 168), the original founder of Abdera, even though his foundation had been destroyed by Thracians and that of the Teians was a new one. It is more than likely that drinking songs in Abdera celebrated Timesias as the founding father who made Abdera safe for the Abderites.

³ Hirsch, *M. Klio* XX (1925) pp. 129 ff.; Beazley, *Sir John, J. H. S.* 68 (1948) pp. 26 ff. Representations in other media are mentioned by G. Richter in *A.J.A.* 32 (1928) pp. 1 ff.

⁴ Edmonds, J. M. *Lyra Graeca* III pp. 566 f. Cf. Bowra, C. M., *Greek Lyric Poetry* (Oxford, 1936) pp. 415 ff. Bowra's assumption that the glorification of Harmodius and Aristogeiton was Alcmaeonid propaganda is not justified by the evidence.

⁵ *Loc. cit.* It is hard to see how the Alcmaeonids could have done so thorough a job of distorting history, if the murder was not political, especially to a generation which knew the deed at first hand.

⁶ Thuc. vi. 54. 3 (Harmodius) φοβηθείς τὴν Ἰππάρχου δύναιμι; vi. 54. 5 οὐδὲ γὰρ τὴν ἄλλην ἀρχὴν ἐπαχθῆς ἦν ἐς τοὺς πολλοὺς, ἀλλ' ἀνεπιφθόνως κατεστήσατο.

⁷ Recent analyses of Hipparchus' share in the power are A. Scholte's 'Hippias ou Hipparque?' *Mnemos.* 3. 5 (1937) pp. 69 ff. and D. Loenen's 'The Peisistratids a Shared Rule.' *Mnemos.* 4. 1 (1948) pp. 81 ff. Much earlier bibliography is given by Scholte.

Thucydides' corrections go beyond those of Herodotus. They undermine every point of the popular 'knowledge', on which the fear and suspicion of 415 B.C. was based, and so deny the validity both of the analogy and of the fearful suspicions. It is for this purpose that the digression on the tyrannicides is inserted in the sixth book. We are accustomed, in Thucydides' work, to digressions designed and included to explain and prove an assertion.¹ Just so, the Archaeology (i. 1—19) proves that, and explains how, this was the greatest war; the Pentecontaetia (i. 89—118) proves that, and explains how, Spartan fear of growing Athenian power caused the war. The assertion of vi. 53. 3 differs from those other assertions in that it is not made by Thucydides but is reported by him as the opinion of the people. That is, the people said, 'We are in a situation parallel to that of Harmodius, Aristogeiton and their fellows, opposing tyrants of an impious and violent disposition; if we are not thorough, we can expect them to take hold more firmly and be put down only by Spartan intervention.' Since it is not Thucydides' own assertion, this digression of explanation and evidence should almost certainly differ from the others by disproving, rather than proving, the assertion. Such is Thucydides' scorn for the untrained and careless interpreter of historical evidence. This digression must be more complex and show not only how the popular 'knowledge' justified the popular motivation but also that their 'knowledge' was not justified by the evidence. Thus we have a situation which seems almost providentially designed to appeal to Thucydides' abilities and historical convictions, a situation in which, for lack of a careful researcher who could dispose of mythical material, his fellow-citizens both misunderstood the past and by so doing mishandled the present situation.² Thucydides could not refrain from making the point in his clearest and most devastating fashion.

And so he has taken the three points on which the parallel between the sixth century attack on tyranny and their own situation was based and demolished them one by one: (1) Hipparchus was the tyrant; (2) the attack on Hipparchus was an attack on tyranny to free Athens; and (3) the tyranny was violent, impious, illegal, and burdensome. The demolition is begun by an assertion that the people do not know anything accurately about their tyrants. This has often been taken as a direct contradiction of the previous statement in vi. 53. 3. It is interpreted as if Thucydides said 'the people were frightened because they knew that the tyranny had not been put down, but that they did not know anything I shall prove by showing that the tyranny was not put down'. So great is the disturbance caused by these two juxtaposed statements

¹ A few other digressions serve merely to give explanatory background material. Cf. i. 126 for that on Cylon and i. 128 ff. for that on Pausanias and Themistocles. But these are simply explanatory and do not present to argue a point as do the Archaeology, Pentecontaetia and that on the tyrannicides.

² Cf. Thuc. i. 22. 4.

that E. Schwartz¹ has given to whole digression with its introduction to his scapegoat editor. Müller-Strübing,² accepting the contradiction, explains it by assuming that Thucydides, in order to correct the brief account of the tyrannicides in his first book, brings in this digression 'by the hair' when the comparison with the events of 415 B.C. suggests a possible connection, even though he must contradict himself.

After his statement of popular 'knowledge' and his counter-accusation, Thucydides has put down the true, footnoted, and reasoned account of the tyrant-murder, interrupting it now and again with direct contradictions of the popular 'knowledge,' for which he gives the evidence.³ It is this true account that we must now examine for internal inconsistencies and contradiction by other sources. The standard for internal consistency is obvious, but to decide between variant versions requires criteria which are specifically adapted to Thucydides and the other sources and which take into consideration in each case the method and purpose of the authors. First, Thucydides: this is one of his argumentative digressions in which he has a thesis to prove, a thesis of which he is so convinced that he must interpret all his material in the terms of that thesis. In so far as his material allows, then, this account will present a tightly reasoned sequence in which each detail has logical relation of cause and effect with all the others. In other words, the whole account is proved by the details and each detail is justified by the whole account and has a reason for being there. If for one of these details there exists in a reputable source a variant which is not so logically bound up in proof of a thesis, that variant, being without reason in its context, is more likely to be the original one. Continuing with Thucydides' method and purpose, we must keep in mind his use of the argument from likelihood, a good example of which occurs in this digression: the fact that Hippias was able to continue the tyranny after Hipparchus' death makes it likely that he had held the power all along (vi. 55. 3). The parallel argument from likelihood for Hipparchus would be: the fact that Hipparchus, who was not tyrant, was killed makes it likely that he was killed for some personal reason. This latter argument is stated by Thucydides not as likelihood but as fact. Whether the 'fact' was based on the argument from likelihood or is independent of it we do not know.

One other characteristic of Thucydides must be taken into account in considering this digression. In matters where we have enough information to check him, we see that he tends to ignore policies and actions which proved to be in-

¹ *Das Geschichtswerk des Thukydides* (Bonn, 1919) pp. 180ff. Cf. M. Hirsch, *op. cit.* pp. 132ff.

² *Thukyd. Forsch.* (Vienna, 1881) pp. 53ff.

³ Just so in the Archaeology there is a flow of narrative interrupted by evidence in support of the argument.

effective,¹ presumably considering that those policies and actions which did not directly and demonstrably accomplish what they intended had no place in an historical account. Faced then with the action and reputation of the tyrannicides which could not be ignored, Thucydides' first reaction must have been: what were the effects? The tyranny continued, but Hipparchus was killed. To judge from its effectiveness and by its results is to see the tyrannicides' action as a plot against Hipparchus, arising from a personal grudge and not as a political plot against the tyranny. Minds react differently to the same stimulus: the Athenian people, learning that Hipparchus had been slain by those who struck a blow for freedom, made of him the tyrant; Thucydides, learning that the tyranny had continued after the slaughter of Hipparchus, made of his death a personal matter.

These are the three aspects of Thucydides' method and purpose which we must keep in mind while examining his digression on the tyrannicides: the tendency to ignore non-effective policies or actions; the use of arguments from likelihood; and the use of digressions to prove theses.

Of the other sources from which come variant versions, only Herodotus and Aristotle are of the same type as Thucydides in that they are historians attempting a factual account of a past event. But they differ from him in one important respect: their narratives occur in place in a chronological record of events, and there is no special pleading, no thesis to prove, only the effort to set down what was known. So much these two have in common. Herodotus' account² will add little in the way of variants to that of Thucydides, since it says nothing of the actual motivation of Harmodius and Aristogeiton or of their actions. This need not mean that Herodotus was unaware of the fatal love affair, but it is strange that a narrative which so lends itself to digression did not include what seems to us a most Herodotean story. Aristotle's account,³ on the other hand, covers almost exactly the same ground as does Thucydides', and yet the variations in detail are striking. Unlike Thucydides' account, that of Aristotle does not seem to argue a case or present more than a story.

With these sources and their limitations in mind, let us turn to a close examination of Thucydides' account in our search for internal and external contradictions. Thucydides maintains that, contrary to popular belief, Hippias as eldest son became tyrant after Peisistratus' death (vi. 54. 2). And yet within this digression there are eight separate statements or implications that the power was not invested in one man and/or that it was shared by Hipparchus:

- vi. 53. 3 'the tyranny of Peisistratus and his sons'
- vi. 54. 3 (Aristogeiton) 'fearing the power of Hipparchus'
- vi. 54. 5 (Hipparchus) 'was not burdensome to the many in his rule'

¹ Cf. evidence presented in my article on the Revolution of the 400 in *A.J.P.* 69 (1948) pp. 272 ff.

² v. 55. 62; vi. 123.

³ *Ath. Pol.* 17 ff.

- vi. 54. 5—6 (the tyranny consisted of various members of the family holding office)
- vi. 55. 1 (the whole family seems to have been listed on the stele concerning the crimes of the tyrants)
- vi. 56. 1 (the execution of Hipparchus' insult is carried out in the plural, as by tyrants rather than one tyrant)
- vi. 57. 4 (Harmodius was guarded by spearmen)
- vi. 59. 3 (the brothers of Archedike were tyrants; that is, if the sons of Hippias were associated in the tyranny, it is likely that his brother was also.)

Thucydides seems to ignore these statements and implications and goes on to add two proofs of Hippias' primacy (vi. 55): (1) the stele on which Hippias was listed immediately after his father and appeared to be the only one of Peisistratus' sons who had children;¹ and (2) the likelihood that, unless Hippias had already been tyrant, the tyranny could not easily have been reestablished the same day as Hipparchus' death.

Despite his insistence that Hipparchus was not tyrant, the general impression derived from Thucydides' account is the same as that given by Aristotle's statement:

Ath. Pol. 17. 3 When Peisistratus died, his sons held the power.

- 18. 1 Hipparchus and Hippias were in control of affairs because of their qualities and age, but Hippias as the elder and as the one who was political and prudent by nature was in charge of ruling.

The difference between Thucydides and Aristotle is more in the way in which the rule is described than in the definition of the rule itself. And in this difference in form we see confirmed our criteria for judging the two accounts. Thucydides, in order to contradict the popular opinion that the tyrannicides killed *the* tyrant and in order to show the likelihood that Hipparchus as a private citizen met death as a result of a personal grudge, explicitly denies that Hipparchus ruled while implicitly admitting it. Aristotle, on the other hand, has no thesis to prove and states explicitly what Thucydides implies.

¹ The reasoning here is obscure. Thucydides says 'for to him alone of the genuine brothers children seem to have been born, as the altar shows and also the stele about the crimes of the tyrants which stands on the Acropolis of the Athenians, on which no child of Thessalus or Hipparchus is inscribed, but five of Hippias . . . for it is likely that the eldest married first.' What the altar shows is that Hippias had one son, Peisistratus, but it does not show that Thessalus or Hipparchus had none. What the stele showed is more difficult to determine. It may have given all the grand-children of Peisistratus, *i.e.* these five of Hippias, and thus provide proof that Thessalus and Hipparchus had no children. But this makes the following γάρ-clause a complete anacolouthon. The only situation which would connect these statements logically is one in which the stele was known to have listed only those members of the family who were in some way involved with the tyranny. The γάρ-clause would then mean that the eldest brother was likely to have been married first and to have had children old enough to join in the tyranny. It would then be logical to conclude that only the oldest grandchildren of Peisistratus would have taken part in the tyranny and that therefore their father, having married before his brothers, must have been the eldest. But this is just another implied admission that Hippias was not the only tyrant.

A second internal contradiction in Thucydides' digression ties in with a significant variant in Aristotle's account, in which Thessalus takes over from Hipparchus the role of rejected lover. Thucydides insists (vi. 54. 1; 56. 2; 57. 3; 59. 1) on the personal nature of the grudge against Hipparchus, and yet admits, more implicitly than explicitly, that the attack on Hipparchus was an attack on the tyranny. In vi. 54. 3 it is implied that Aristogeiton as an ordinary citizen had no hope of saving Harmodius from Hipparchus except by destroying the tyranny, even though the tyrants had never used violence. Thereafter, it is taken for granted that the attack will be on Hippias first (vi. 57. 1). This would have served Thucydides as certain proof that Hippias was chief of the tyrants, but if he had used it and made much of it, it would have spoiled his case of the personal grudge without political meaning. Thucydides describes Hipparchus as second-best victim when Harmodius and Aristogeiton feared to make the attempt on Hippias. That is, the conspiracy which was provoked by Hipparchus was, according to Thucydides, aimed at Hippias and only killed Hipparchus by a sort of backfire. The symmetrical ABBA construction seems almost too fortuitous: in order to take vengeance on A they planned to kill B, but when they were suddenly frustrated in the plan to kill B, they turn aside to kill A. This roundabout method of going from A to A (cause to effect) through B B should give rise to suspicious incredulity, not of Hipparchus' death, which is undoubted fact, nor of the change in victims from Hippias to Hipparchus (which appears also in Aristotle's account where the ABBA construction does not appear), but of the paramount importance to Thucydides of the personal motivation. In Aristotle's account the amorous Peisistratid is not Hipparchus but Thessalus. And Thessalus in this role is very much the illogical detail for which, unless it be actual fact, no reason can be adduced except that Thessalus was the youngest and so presumably the rashest of the brothers. That is, historians after Thucydides may have felt that Hipparchus was miscast in this role and so reassigned it to Thessalus. In either case the story was not fixed (since both versions existed) but could be changed in accordance with the interpretation. So it is as likely that Thucydides made Hipparchus the lover to justify his personal motivation as that Aristotle (or his sources) made Thessalus the lover as being of a more suitable age and temperament. And the unreal symmetry of Thucydides' version along with the use he makes of Hipparchus in this role to prove his point suggests that Thucydides had more reason for his assignment of the role than did Aristotle.

The next point in Thucydides' narrative which gives us pause is the reason stated for Hipparchus' not using force in his wooing of Harmodius (vi. 54. 4). Thucydides says that he did not because neither he nor his family used force in the rule. This is not only an implicit admission that Hipparchus was concerned in the tyranny, but also it is a neglected opportunity to explain that Hipparchus did not use force because he was not the tyrant. As a matter of

fact, if Hipparchus was a simple private person there was no need to explain why he did not use force. The reason for Thucydides' explanation, however, becomes apparent as we continue reading and find what amounts to a defence of the tyrants' legality: they practiced virtue and understanding, imposed only moderate taxes, ordered the city well, defeated enemies, sacrificed in the temples, and made use of the previously existing laws. As noted above, Thucydides is concerned to disprove all of the popular 'knowledge' on which the parallel between the ancient tyranny and the impieties of 415 B.C. was based. Having already proved that Hipparchus was not tyrant, so that his murder could not be regarded as a political act, he can go on to disprove another basis of the comparison drawn between the Peisistratids and the Hermecopids: that the Peisistratids were not violent, unrestrained and impious. This account of the tyrants' mildness continues with a reference to the younger Peisistratus, who seems to be brought in only to motivate mention of the altar he dedicated to the Twelve Gods, which not only exemplified the tyrants' piety but also emphasized the contrast between the Peisistratids and the impious ones of 415 B.C., because the altar was the scene of one of their acts of impiety (Plut. *Nic.* 13). The mention of the altar with its inscription apparently reminded Thucydides of other epigraphical evidence, so that this digression on the mildness of the tyrants was wound up and brought back to the point by the re-assertion that Hippias must have been the tyrant.

The next step was that devised by Hipparchus but executed by the tyrants for the punishment of Harmodius. He was to be insulted through his sister, who was arbitrarily dismissed from the procession in which she had been invited to carry a basket. Here Thucydides is definite in making the particular procession indefinite (vi. 56. 1). In Aristotle's account (18. 2) the procession is that of the Panathenaia and apparently identical with the festival during which the murder took place. In both accounts this insult is treated as the last straw, but the train of events is viewed differently. Thucydides attributed to Aristogeiton, at least, plans for destroying the tyranny before this incident and then allows the conspiracy further time to mature after the incident so that the attack may be launched during the Panathenaia when least suspicion would be aroused by the carrying of arms and when a very few might start a revolt in which the armed citizens would then join. Aristotle's denial (18. 4) that arms were worn in the Panathenaic procession in Hipparchus' time contradicts Thucydides' version, as does also his assertion that the number of conspirators was large. In Thucydides' account these two details are connected by a logical link, since the presence of large numbers of armed men at the Panathenaia would both make up for the fewness of the conspirators and make their carrying of arms less conspicuous. Even without Aristotle's contradictions the account of Thucydides is puzzling, because we must wonder both why large numbers of citizens would be expected to join in a purely personal, non-political move against

Hipparchus or the tyrants and how the carrying of swords or daggers would be less conspicuous when everyone was carrying shield and spear (vi. 58. 2). Taking Aristotle's contradictions into account, we may see how Thucydides was led astray both by his habit of drawing probable conclusions about the past on the basis of contemporary facts and by the thesis here being proved. That is, since the conspiracy was personal, it must have included only a few men, and since they must have had some reason for waiting till the Panathenaia, the reason most obviously appealing to a fifth century historian was the armed nature of the procession.

Here it may be asked why Aristotle's account is preferred in these two details, for which we have no outside corroborative evidence. The answer must be that Thucydides' internal inconsistency makes his account more doubtful and that the two details form a necessary part of the tightly woven fabric of cause and effect in Thucydides' narrative. Aristotle's versions of these two details are not logical steps in any proof, but simply part of his story. Because they have no reason for being where they are, they paradoxically have a better chance of being true.

The next point on which there is disagreement between Thucydides and Aristotle is the position of Hippias when the conspirators thought they were being betrayed. Thucydides (vi. 57. 1) places him in the Cerameicus and has him marshalling the procession; Aristotle (18. 3) puts him on the Acropolis to receive the procession. To judge between these we must consider whether one or the other placement is necessary to the argument in either narrative. In Thucydides' account Hippias is given the only official position since no one is receiving the procession on the Acropolis; this is consistent with Thucydides' assertion that Hippias was *the* tyrant. Later in the story, moreover, Hippias' position at the starting-place of the procession makes it possible for him to separate the hoplites from their arms and search them for daggers. This action on his part is suspect for two reasons: first, because the Panathenaic procession was unarmed in Hipparchus' time; second, because Hippias' action duplicates a story more appropriately told of Peisistratus earlier in Aristotle's *Constitution of the Athenians* (15. 4—5). The story is more appropriate to Peisistratus both because it makes more sense there and because its use of specific buildings lends it greater verisimilitude. That Thucydides applies this second-hand story to Hippias in order to dispose of the arms which seem not to have been worn and therefore locates Hippias in a place not universally agreed on suggests that Thucydides' version, though all of a piece with the thesis he is proving, may not be factually true. Aristotle has no reason other than knowledge of the fact to put Hippias on the Acropolis, and so it is likely that he was there. And if the conspiracy of Harmodius and Aristogeiton was a political conspiracy, it is most probable that the effort would have been not only to kill the tyrants but also to take control of the Acropolis. And the choice of the Panathenaia may

well have been motivated by the opportunity it provided for getting both Hippias and the Acropolis at one stroke. We shall come back to this later when we try to write our own account of the tyrannicides.

The location of Hipparchus is closely related to that of his elder brother. Herodotus has him marshalling the procession (v. 55); Thucydides locates him by the Leocoreion (i. 20; vi. 57. 3); and Aristotle (18. 3) puts him by the Leocoreion to marshal the procession. Although the location of the Leocoreion may be debated,¹ it seems clear that Hipparchus was in or close by the Cera-meicus and that he has been deprived of his position as marshal only by Thucydides whose thesis obliged him not only to keep Hipparchus unofficial but also to give Hippias that function and position.

Finally, Thucydides' account differs from that of Aristotle in the circumstances surrounding Aristogeiton's death and in the results of the abortive conspiracy. Thucydides (vi. 57. 4) reports only that Aristogeiton was not, like Harmodius, slain on the spot but was pursued and killed later with difficulty. Other members of the conspiracy were then detected by Hippias' ruse of separating the hoplites from their procession armor so that he might charge those whom he had reason to think guilty and those carrying daggers. Aristotle (18. 4) gives additional details concerning the death of Aristogeiton: that he was tortured and revealed the names of various distinguished men who were involved in the conspiracy. Aristotle quotes two opinions concerning these names: some say that Aristogeiton made charges at random among the tyrants' friends so that the tyrants would act impiously and weaken their support by killing innocent men and their friends; some say that he did not invent but informed on them as actual conspirators. Not only have we seen reason to believe that Hippias' method of detecting the conspirators (as reported by Thucydides) may not be based on fact, but also a later statement by Thucydides suggests that there was the kind of uncertainty about the conspirators' identity that would be far more likely to result from the situation described by Aristotle than that given by Thucydides. Thucydides says (vi. 59. 2) that after this the tyranny became harsher and Hippias, becoming more fearful, both killed many of the citizens and looked to see if he could find security outside the country in case of a revolution. This description of Hippias' actions does not accord with Thucydides' suggestion of a quick and decisive end to the conspiracy, nor does it lend any color at all to Thucydides' thesis that the conspiracy was non-political. Hippias seems rather to act as if he had heard many accusations such as those made by Aristogeiton in Aristotle's account and as if he did not know whom he could trust.

The final detail in Aristotle's account of Aristogeiton achieving death at the hand of Hippias has no bearing on the problem we are considering. Whether

¹ Cf. Judeich, W. *Topographie von Athen* (Munich, 1931) pp. 338f.

it is fact or the sort of apocryphal story that emerges about faithless tyrants is impossible to say.

So far we have attempted merely to explain why Thucydides and Aristotle present such different versions of the conspiracy and to show that the validity of Thucydides' account is affected by his efforts to disprove the parallelism of the situations in 514 and 415 B.C. Some attempt must now be made to determine the actual course of events, although this has been made difficult by Thucydides' account, Aristotle's reworking of Thucydides' material, and by the passions of patriotism and family pride and the political prejudices which such a cause célèbre evokes. But if, without reference to our sources, we were merely to imagine a conspiracy against the tyrants along the lines of the typical Athenian (or Greek) coup d'état, it should go like this:

- Time: a festival, when normal safeguards might be at a minimum; when the tyrants would be mingling with the citizenry; and when the blow could be struck under the auspices, as it were, of a deity; the Panathenaia is obviously the best festival because it provides ready access to the best place.
- Place: obviously the citadel, hence the Acropolis, since even if the conspirators are certain of popular support they must have a strong point which they can hold during the initial confusion.
- Method: (for two or more tyrants) divide and conquer; *i.e.* arrange that one can be killed in a place which can then be held against attacks organized by the other(s).

So if one tyrant was to receive the Panathenaic procession on the Acropolis and another was to bring the procession, the best plan was to kill the tyrant on the Acropolis, close the gates and signal to other conspirators in the procession to kill the tyrant(s) leading the procession. Then, depending on the popular reaction, the procession could continue peacefully under the new regime or the conspirators could hold the Acropolis and establish their power by force.

If this was the plan, and if it went awry in the one detail on which Thucydides and Aristotle seem to agree, that Harmodius and Aristogeiton thought that Hippias knew all and would seize them before they could take action, the natural result would be for them to run down the hill and murder at least Hipparchus before he could be put on his guard. If the plan was such and if it failed of execution in this way, the story of the plot and its effects would necessarily have been affected, since intentions which are not realized in action are neither memorable nor susceptible to proof. The first reaction, while some knowledge of the plot still survived, might be this: because Hipparchus was killed by men who plotted against the tyranny, he became *the* tyrant because Harmodius and Aristogeiton were tyrant-slayers. It was under the influence of this first reaction that skolia were composed, statues erected and pictures painted. Sober second thought, however, recognizing that the tyranny had continued, designated Hippias as *the* tyrant; and because Hipparchus' death

was not effective as a tyrant's death, it came to be regarded as the death not of a tyrant but of a private person. Personal and private grounds were then sought for the murder of Hipparchus as a private person. Old scandals were brought forward relating to the Peisistratids' treatment of their subjects; among these was the apparently arbitrary insult put upon the sister of Harmodius. When the motive for this was inquired, the known predilection of the younger Peisistratids for handsome young men seemed to make it obvious that one of them must have insulted the sister of Harmodius to avenge a slight put upon him by Harmodius' refusal to accept his attentions. Since Hipparchus it was that died, he seemed the proper person to give the offence that led to his death. The difference in the identity of the offender in the accounts of Thucydides and Aristotle requires some such development of the story; as does also the silence of Herodotus. If Hipparchus' love for Harmodius was generally known as the actual prelude to the murder, both the silence of Herodotus and the variant of Aristotle would have been impossible.

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MABEL LANG

ITHOME: A NOTE

With the recent contribution of Mr. David M. Lewis¹ a new stage appears to have been reached in the discussion of this evergreen problem. This is a stage in which the author, pointing to "the demonstrations of Gomme, the authors of ATL and of Klaffenbach",² ranges himself with the critics of the MSS. reading $\delta\epsilon\kappa\acute{\alpha}\tau\omega$ in Thuc. I 103.1, and with good reason considers that he need offer no apology in doing so. It is a stage, then, in which the question of a mistake in the date of the end of the Helot revolt can perhaps be taken as settled, and in which attention can be paid to points of detail about which disagreement might arise amongst those who are agreed about the main issue. The explanation which Mr. Lewis offers for yet another contribution on the problem is that he cannot accept a statement which has found universal acceptance among the critics of $\delta\epsilon\kappa\acute{\alpha}\tau\omega$ — not to mention its defenders — the statement that Ephoros read $\delta\epsilon\kappa\acute{\alpha}\tau\omega$ in his text of Thucydides.

It is not my intention in this note to consider "the tentative and paradoxical conclusion" of Mr. Lewis, "that it was not Thucydides who influenced

¹ *Ithome Again* in *Historia* II (1954), pp. 413—8.

² Pp. 413—4. The references are to A. W. Gomme, *A Historical Commentary on Thucydides* (Oxford 1945), I pp. 401—8; Meritt, Wade-Gery and McGregor, *The Athenian Tribute Lists* III (Princeton 1950) pp. 162—8; and G. Klaffenbach in *Historia* I (1950), pp. 231—5.

Ephorus, but Ephorus who influenced the text of Thucydides" (p. 416). My purpose is similar to his, however, in so far that I wish to indicate that there are other arguments which have been almost universally accepted by the critics of δεκάτω — with whom I range myself — arguments of an *a priori* character with which, after the above-mentioned "demonstrations," we can safely dispense. So far, however, this note could serve only a negative purpose. In conclusion, therefore, an attempt will be made to put forward a positive suggestion in support of the critics of the MSS. reading δεκάτω.

Since the time of Krüger (*Hist. Phil. Studien* I, pp. 156ff.) two general arguments have usually been advanced by the critics of the reading δεκάτω — though they are refreshingly absent in the authors of ATL III.

Krüger argued that, on *a priori* grounds, it was unlikely that the rebels could have defended Ithome for ten years. This argument implies that the Helots and Messenians were shut up on Mt. Ithome from the start. This, however, cannot be accepted. Gomme (p. 301) correctly pointed out that "Thucydides' extremely abbreviated account of this war has suggested that the Spartans had shut up the Messenians and Helots within Ithome before the arrival of reinforcements, and that most of the years of the war were spent in a regular siege. This cannot be the case. Diodoros' account (64.1) is nearer the truth, by which the rebels, using a χωρίον ὀχυρόν as a base, ravaged Lakonia, and hence the Spartan appeal for help."

However, we may take it that a large part of the rebels were being besieged on Mt. Ithome by the year 462, in which the Athenians under Kimon were dismissed by Sparta.

The real question, then, is whether the rebels could have defended Ithome for a further six years after the withdrawal of the Athenians. If we approach the question from the point of view of the strength of the place, and the deficiency of the Spartans in siege operations (Thuc. I 102.2), our answer would be in the affirmative. Ithome was an easily fortified stronghold, and we know from Pausanias IV 24.7 that the rebels were allowed to surrender under terms (cf. Thuc. I 103.1 ὑπόσπονδοι), partly on religious grounds, but partly on account of the strength of the place.

The deciding factor however must be the question whether the insurgents could have obtained sufficient food supplies to maintain themselves for a further six years on Mt. Ithome. To Beloch² II 2, 196 it is clear that a besieged stronghold, cut off from supplies on all sides, could not have held out for five to six years. Busolt III 1, 299 maintains that if the Helots occasionally succeeded in making a raid from Ithome, „so werden sie doch in dem durch den Krieg hart mitgenommenen Lande nicht viel Proviant aufgebracht haben“. Under these circumstances he finds it inconceivable that the insurgents should have maintained themselves for a further six years. With Beloch and Busolt agrees Klaffenbach (p. 233).

This argument admittedly carries some weight. Mt. Ithome is perhaps not big enough to provide food for a fairly large number of people besieged there for six years. On the other hand, not only could food have been stored there, but on account of the Spartan incapacity in siege tactics, the Helots could undoubtedly have made a considerable number of marauding expeditions from their stronghold to obtain food.¹ A large number of Spartan troops were moreover needed to keep an eye on the Helots and Messenians in other parts of the country; and to make things worse, the Spartan man-power had been much depleted by the disastrous earthquake which had taken place at the time of the revolt.² Finally, in 458/7 Sparta was forced to send 1500 of her own troops, along with 10,000 of her allies, outside the Peloponnese for the protection of Doris (Thuc. I 107.2).

Our examination of the first general argument suggests that it does not carry much weight. However, it leads us to a consideration of a second argument of the same nature.

Krüger also found it unlikely — on *a priori* grounds — that while they were still engaged in the siege, the Spartans could send out to protect Doris the large army which fought at Tanagra in 458/7. This army consisted, as we have pointed out, of 1500 Spartans and 10,000 of the Spartan allies. With Krüger agrees Busolt III 1,299, n. 2 (contd. from p. 298) and Gomme (p. 403, n. 3, contd. from p. 402).

The objection to the above argument which lies ready to hand is that Sparta was *compelled* to strike back at Athens even if she had not yet secured the surrender of the rebels on Mt. Ithome. To appreciate this we have only to consider the events which took place between 462/1 and 458/7 (Thuc. I 102.4—105.6): the alliances concluded by Athens with the Argives and the Thessalians after abandoning her alliance with Sparta; the occupation of Megara and Pegai, the Megarian alliance, and the building of Long Walls to Nisaia; the Athenian victory over a Peloponnesian fleet at Kekryphaleia; and, in the same campaigning season, the Athenian victories in a sea-fight against the Aiginetans off Aigina, and in a land-battle over the Corinthian army in the Megarid. Not only was the Megarian alliance of the greatest strategic importance to Athens, but the defection of her former ally must have been a painful thorn in the Spartan flesh. For some reason the final spur which roused Sparta from her

¹ It is extremely doubtful whether an effective siege, covering the whole circumference of Mt. Ithome, would have been practicable for the Spartans and their allies. Cf. on the other hand, on the natural advantages of Mt. Ithome for the besieged, M. Cary, *The Geographic Background of Greek and Roman History* (Oxford 1949), p. 92: "Well supplied with water from springs, and containing in its inner combe an expanse of good pasture and crop land, etc."

² For the effects of the earthquake on the citizen population of Sparta, cf. Gomme pp. 298—9 and 360 for references to the relevant literature.

inactivity abroad, was the attack on Doris by the Phokians, who according to Thuc. III 95.1 were the traditional friends of the Athenians.¹

Our examination of the second general argument leads to the same conclusion as that of the first, viz. that it carries little weight. There were more than sufficient external causes to rouse the Spartans, generally slow to interfere abroad, to action by 458/7, even if they still had the siege of Ithome on hand.

Our final conclusion with regard to the two general arguments examined above is that, considered on their own merits, they carry little weight, and that no conclusion as to the rejection of the MSS. reading δεκάτω should be based on them.

* * *

Our positive suggestion concerns the date of the origin of the Athenian "enmity" towards the Lacedaemonians to which Thucydides refers. In I 103. 1—3 he says that in the tenth year (δεκάτω ἔτει, i.e. 456/5 or 455/4) the rebels at Ithome surrendered to the Spartans. The Athenians received the Messenians κατὰ ἔχθος ἤδη τὸ Λακεδαιμονίων, and settled them at Naupaktos.

The question is whether ἤδη is prospective, meaning "by this time," and referring to a developed stage of the enmity between Athens and Sparta, caused by events *after* the Megarian alliance, i.e. "the bitter (and bloody) struggles of the First Peloponnesian War" (ATL III, p. 164); or whether it refers to a stage in the enmity between Athens and Sparta *before* the outbreak of the First Peloponnesian War in 458/7. If the first alternative were correct, the context would suit the year 456/5 or 455/4 as the year of the end of the Helot revolt and the settlement of the rebels at Naupaktos (i.e. δεκάτω ἔτει). Krüger, however, correctly pointed out that the phrase suggests "that the measure was adopted at an early stage of their enmity, not after several years had intervened and several battles had been fought between them".² For, as Oncken³ pointed out, after the outbreak of the First Peloponnesian War and the battle of Tanagra these words would no longer make sense.

¹ The question arises why Sparta and the Peloponnesians acted on such a large scale. The Spartans, of course, like the Dorians of the Peloponnesos in general, claimed that Doris was their mother-city (Tyrtaios, fr. 2). But there was no need to send such a large force for the protection of Doris against Phokis. Gomme p. 314 suggests that it was "to restore a damaged reputation." But there must have been an additional objective more important than the restoration of a damaged reputation. The Spartan objective, after the recent victories of the Athenians — military and diplomatic — both inside and outside the Peloponnese (*South and North Greece*), was to ensure that the spread of Athenian influence in *Central Greece* should be prevented.

² B. Jowett, *Thucydides vol. II* (Oxford 1881), p. 68.

³ *Athen und Hellas* I, p. 156, cited with approval by Busolt III 1, p. 299, n. 2 contd. from p. 298, and by Klaffenbach p. 233. Cf. also ATL III, p. 164.

So far, then, a negative reason has been established for not assigning the ἔχθος to a context which suits the reading δεκάτῳ ἔτει. The question arises whether a *positive* reason can be established for assigning it to a year c. 461 (assuming, for the sake of argument, that Thucydides adheres to the chronological order, and that the Megarian alliance (as *terminus ante quem*) in I 103.4 should be dated in 461/0).

This can readily be done by considering the date of the causes of the ἔχθος. For if we can date the causes, it follows that no long period could have intervened before the ἔχθος itself was an established fact. Now the causes of the ἔχθος are undoubtedly to be found in the last two paragraphs of the immediately preceding chapter (I 102.3—4). They were the dismissal of the Athenian contingent by the Spartans, causing resentment among the Athenians; the resulting abandonment of their alliance with Sparta; their conclusion of a treaty with the Argives, the enemies of the Spartans; and the conclusion of a treaty by the Athenians (and the Argives) with the Thessalians. The first cause of this open ἔχθος was the dismissal of the Athenians by Sparta. Thuc. I 102.3 says very clearly: καὶ διαφορὰ ἐκ ταύτης τῆς στρατείας πρῶτον Λακεδαιμονίοις καὶ Ἀθηναίοις φανερά ἐγένετο. Counter diplomatic measures followed — those described above — and it is generally agreed that they all belong to the years 462 and 462/461.

The chronological implications are clear. Since the causes of the open ἔχθος are to be assigned to the years 462 and 462/461, the ἔχθος in its present context cannot be assigned to the year 456/5 or 455/4 (i.e. δεκάτῳ ἔτει), but must be put about the year 461. But since the Athenians received the rebels κατὰ ἔχθος ἤδη τὸ Λακεδαιμονίων, i.e. "in keeping with the hatred they now bore the Lakedaimonians",¹ and Thucydides (I 103.3) suggests that they were immediately accepted by the Athenians, it follows that the surrender should be dated about 461 B.C.

Finally — with regard to the reading τετάρτῳ as an emendation for δεκάτῳ — it is generally agreed that 462 was the year of the Spartan appeal to Athens, the despatch of the Athenian contingent under Kimon, and its dismissal by the Spartans. Marchant, *Thucydides, Book I* (London 1912), p. 236 objects to the reading τετάρτῳ on the ground that "in view of the fact that Cimon was not sent to Sparta until after the capitulation of Thasos (i.e. 463/2 B.C., cf. Gomme p. 391), and that then ἐμυκύνετο ὁ πόλεμος, it is doubtful if four years is enough." This is misleading. Thuc. I 102.1 implies that "the war became a long affair" *before* the Spartan appeal to Athens in 462, for it was on this ground that Sparta appealed to her allies and the Athenians for help. The first part of I 102.1 overlaps backwards with the account of the siege of Thasos.

¹ Translation of the authors of *ATL* III, p. 164.

Postscript. See now *Historia* III (1954), Heft 2 — which appeared after this note was submitted to the editors — for *Noch einmal Ithome* (pp. 153—162) by Joachim Scharf. Scharf, who defends the reading δειλάτω in Thucydides, puts the end of the revolt in 459 or 458 and its beginning in the early sixties — 469/8 with Diodoros XI 63—4 or 468/7 with Philochoros (Schol. Ar. *Lys.* 1144) — and reconciles Diodoros with Thucydides by suggesting that the revolt was smouldering under the surface until the spring of 464 when the great earthquake occurred, and that only then it flared „mit neuer und weithin sichtbarer Gewalt wieder empor“ (p. 160). As it is impossible to consider the arguments of Scharf in a postscript, I can here only refer to Gomme pp. 403—8, who has dealt adequately with similar arguments advanced by other scholars.

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PROVOCATIO

DURING THE FIFTH AND FOURTH CENTURIES B.C.

Those scholars who during recent years have discussed the subject of *provocatio* have almost without exception concentrated upon its legal aspect. Their aim has been either to refute or to vindicate Mommsen's doctrine that every trial before the *populus* was based, at least in theory, upon a prior appeal from the authority of the magistrate.¹ With this issue I have no intention of concerning myself in this article except in so far as the acceptance of certain conclusions proves to be essential for the development of my argument. My purpose is to discuss a question of purely historical interest which has of late received scanty attention in its own right.² When and in what circumstances was the magisterial right of *coercitio* within the city, however restricted it may have been in scope, first effectively challenged? By what stages did the conception of an undisputed *ius provocationis* develop?

¹ Mommsen, *Römisches Staatsrecht* I³, 136 ff.; II³, 109 ff., 300 ff., 537 ff.; III, 350 ff.; *Römisches Strafrecht*, 35 ff., 152 ff., 473 f. For more recent literature on this subject, compare in particular C. Brecht, 'Zum römischen Comitialsverfahren', *Zeitschrift der Savigny-Stiftung* LIX (1939), 269 ff. (with full bibliography); A. Heuss, 'Zur Entwicklung des Imperiums der römischen Oberbeamten', *Zeitschrift d. Sav.-Stift.* LXIV (1944), 93 ff.; H. Siber, *Analogie, Amtsrecht und Rückwirkung im Strafrecht des römischen Freistaates* (Leipzig, 1936); *Römisches Verfassungsrecht* (Lahr, 1952), 127 ff.

² The matter has indeed been somewhat generally treated in recent years by Heuss, *art. cit.*, 118 ff., and by Siber in several of his works (cf. 'Provocatio', *Zeitschrift d. Sav.-Stift.* LXII (1942), 379 ff.; *R.E.* XXI, 177; *Röm. Verf.*, 44 ff., 127 ff.).

The beliefs of the Romans themselves on this matter were fairly consistent. *Provocatio* and the consequent hearing of cases before the *populus* dated from the regal period, although the power of the king to pass sentence in any case himself was in no way restricted and he was at liberty, if he wished, to refuse an appeal.¹ The first attempt to confer a definite *ius* upon the *populus* came, we are told, in the very first year of the Republic with a law of the consul, Valerius Publicola. Upon the extent of the limitation imposed on magisterial authority by this measure the sources are not in full agreement – Cicero and Pomponius speak of a ban upon punishment by death or scourging without popular sanction,² while Dionysius and Plutarch understand the restrictions also to have covered fining³ – but it is their unanimous verdict that only the *coercitio* of the consuls was effected, and that the Decemvirs⁴ and, for a considerable time at least, the dictators⁵ were under no obligation to grant an appeal. In the course of the first two centuries of the Republic there was further legislation on the subject. Cicero tells us that the *provocatio* procedure was extensively recognized in the laws of the Twelve Tables – *ab omni iudicio poenaeque provocari licere indicant XII tabulae compluribus legibus*;⁶ while the annalistic account speaks of a law *ne quis ullum magistratum sine provocatione crearet*, which it includes in the Valerio-Horatian programme of 449 B. C.,⁷ and of another, similar in content to the Publicolan measure of 509 B. C., although, as Livy puts it, *diligentius sancta*, which is ascribed to the consul, Valerius, of 300 B. C.⁸

This entire tradition, although accepted in almost every detail by Mommsen

¹ Cicero, *De Republica* II, 54: *provocationem autem etiam a regibus fuisse declarant pontificii libri, significant nostri etiam augurales*; *Pro Milone*, 7; Livy I, 26,5; Dion. Hal. IV, 25,2; Festus 297 M.

² *De Rep.* II, 53: *legem ad populum tulit eam, quae centuriatis comitiis prima lata est, ne quis magistratus civem Romanum adversus provocationem necaret neve verberaret*; *Digest*, I,2, 2,16; Val. Max. IV, 1,1. Livy (II, 8,2) is not explicit, but he would appear to share this opinion if he regards a later law of 300 B. C. as similar in content (see below, p. 414).

³ Dion. Hal. V, 19,4; Plutarch, *Poplicola* 11. Cicero's statement that the fall of the monarchy was followed by the admission of *provocationes omnium rerum* (*De Rep.* I, 62) does not necessarily refer to the imposition of a universal ban upon summary jurisdiction, but is to be taken closely with what he says about the provisions of the Twelve Tables (see below, p. 421).

⁴ Cicero, *De Rep.* II, 54; Pomponius, *Digest*, I,2, 2,24; Livy III, 32,6; 33,9; 45,8; 48,9; 53,4; Dion. Hal. X, 55,4 etc.; Zonaras VII, 18.

⁵ Pomponius, *Digest*, I,2, 2,18; Festus 198 M; Livy II, 18,8; 29,5; III, 30,8 etc.; Dion. Hal. V, 75,2; VI, 58,2; Zonaras VII, 13; Plutarch, *Ti. Gracchus*, 18.

⁶ *De Rep.* II, 54.

⁷ Livy III, 55,5, 14; Cicero, *De Rep.* II, 54.

⁸ Livy X, 9,3–6: *eodem anno M. Valerius consul de provocatione legem tulit diligentius sanctam ... Valeria lex cum eum qui provocasset virgis caedi securique necari vetuisset, si quis adversus ea fecisset, nihil ultra quam 'improbe factum' adiecit*.

and his school, is to-day generally rejected.¹ The ascription of three laws on the same subject to members of the *gens Valeria* is in itself highly suspicious, and the fact that the supposed first law of 509 B. C. is couched in almost identical terms with that of 300 B. C. at once invites the conclusion that it is a mere retrojection, fostered by the later Roman tendency to antedate the development of popular sovereignty and by the family pride of Valerius Antias. As has frequently been pointed out, the case of the sceptic is further strengthened by the very mildness of the *sanctio* contained in what purports to be the third measure. According to Livy, the *lex Valeria* of 300 B. C. did not, as did a later *lex Porcia*, prescribe specific penalties which were to be inflicted in cases of its violation, but merely declared that magisterial disregard of *provocatio* against a sentence to death or scourging would be regarded as *improbe factum*. If this is so, however, it becomes extremely difficult to understand what the annalist could possibly have meant by describing the law as *diligentius sancta*. Schwegler's conception of a moral duty legally imposed in the first year of the Republic is surely a self-contradiction.² A law may not specify a penalty, but, if it is to be a law at all, it must at least assume that its contravention admits of punishment. The more recent suggestion of Siber that in the years prior to 300 B. C. a magistrate could only be punished for overriding a legitimate appeal of the accused if the latter were in fact innocent, is equally unacceptable:³ for, if there were to be no vote of the *populus*, there could have been no criterion by reference to which a man's guilt or innocence could be determined other than the actual decision of the magistrate himself. Clearly, if a law of 509 B. C. there was, it can not have differed from that of 300 B. C. in respect of its *sanctio*, but only in respect of its positive content,⁴ and, as this possibility receives no support whatever from the sources, it may safely be ignored. I conclude, therefore, in common with the great majority of modern scholars,⁵ that the first measure designed to *compel* a magistrate to recognize *provocatio* against a sentence to death or scourging was the *lex Valeria* of 300 B. C., and that the supposed law of Publicola is not authentic. This verdict is one which accords well with current opinions concerning the nature and basis of the primitive Republican constitution. Although the later Romans were at

¹ Compare in particular E. Pais, *Storia di Roma* (Turin, 1898) I (i), 489; G. De Sanctis, *Storia dei Romani* (Turin, 1907) I, 411; II, 52, 231; G. Rotondi, *Leges Publicae* (Milan, 1912), 235; P. De Francisci, *Storia del diritto Romano* I (Milan, 1926), 345 f.; Heuss, *art. cit.*, 115, Ernst Meyer, *Röm. Staat und Staatsgedanke* (Zürich, 1948), 62; Siber, *R. E.* XXI, 176 ff.; *Röm. Verf.*, 33.

² *Römische Geschichte* II (Tübingen, 1870), 175.

³ *Röm. Verf.*, 35, n. 1.

⁴ This possibility was embraced by Mommsen (*St. I*³, 156; III, 353), who somewhat unplausibly suggested that the law of 509 B. C. concerned the death penalty alone, and did not extend the *ius provocationis* to cover scourging, as did that of 300 B. C.

⁵ A notable exception is Siber, who argues that the *ius provocationis* dated from the period of the Decemvirate (*R. E.* XXI, 177; *Röm. Verf.* 129 f.). See, however, below, p. 421.

pains to convey the contrary impression, the early state was not founded upon the principle of popular sovereignty to any appreciable degree. The overthrow of the monarchy had been a victory for the families of the aristocracy. It was they who controlled the new electoral and legislative assembly and who from their own ranks provided the consuls of the Republic, and as a consequence it is they who must be held solely responsible for any restrictions imposed upon magisterial authority. It would not be easy to explain why this ruling clique should voluntarily have so weakened that authority as to render summary capital punishment in the city illegal. In a highly unsettled age, when the very survival of the new regime was threatened not only by foreign foes but by the lower stratum of Roman society itself, the need to provide for quick and decisive action in dealing with traitorous and rebellious conduct must surely have been recognized.¹

A *ius provocationis*, then, if possession of such a right be taken to involve a corresponding legal duty on the part of the magistrate to recognize its validity, did not come into being, at least as far as capital punishment was concerned, until the close of the fourth century. But the matter cannot be left here. It is a mistake to imagine that only then can the very principle of *provocatio* have been officially acknowledged. That cases were in fact heard by the *populus* long before *provocatio* in such cases became established as a right of the citizen is a possibility, fully admitted, as we have seen, by the ancient sources,² which should not be overlooked. There still remain, therefore, two vital questions which cannot be answered simply by consideration of the various *leges Valeriae*. First, when and in what manner was the absolute power of the consul over life and death effectively challenged? Second, when and for what reason did *provocatio ad populum* become an officially recognized procedure?

As has already been noted, the ancient tradition carried *provocatio* back into the regal age. If it were right in so doing, our questions would perforce

¹ This point of view is apparently not shared by Heuss, *art. cit.*, 80 ff., 107, who believes that the patricians would have considered the unrestricted magisterial *ius coercionis* a grave danger to their own freedom. He points to the *patrum auctoritas* as providing proof that the consuls were not wholly trusted. But this restraint upon the consuls' authority to legislate – even if it dated from the beginning of the Republic, which is by no means certain – cannot be taken to imply similar restraints in the sphere of jurisdiction. The unbridled power to carry laws with the co-operation of the assembly might well have been abused by an ambitious individual with a view to winning popular support and establishing a tyranny (cf. the case of Spurius Cassius); but the right of *coercitio* could have served little purpose other than the maintenance of order and good government.

² Cf. Cicero, *De Rep.* II, 54 (see above, p. 413 note 1). It will be noted that, while the unreliable *libri pontificii* actually declared – *declarant* – that there had been *provocatio* in regal times, the far more trustworthy *libri augurales* are merely said to have indicated – *significavit* – that this was the case. The regulations contained in the latter may only have hinted to Cicero that at some time unspecified the admission of *provocatio* had been optional.

have to remain unanswered. But it may be said with some assurance that the role assigned to the *populus* in the period of the monarchy is quite anachronistic and wholly inconsistent with the very concept of *regnum*.¹ The origin of the *provocatio* procedure must therefore be sought in the early Republic, and, this being so, it is difficult to escape the conclusion that it was in some way associated with the Struggle of the Orders. Unless it be supposed that the consuls granted an appeal to the *populus* against their own authority of their own free will, *provocatio* in the period before 300 B. C. can only have been recognized under severe pressure from a highly organized body which had both the power and the desire to impose its terms upon the governing oligarchy.

This connection between the development of *provocatio* and the activity of the *tribuni plebis* has recently been acknowledged by Heuss, one of the few scholars who reject the early *leges Valeriae* ever to have dealt with this matter. It is therefore the more strange that he refuses to admit that any procedure for bringing cases before the *populus* on appeal was formulated until the end of the fourth century. In his opinion, the magisterial *ius coercitionis* within the city was not covered by the original *imperium*, but was a usurpation encouraged by the patrician Senate. At first it was countered with some success by the exercise of the tribunician *ius auxilii*; then, in 300 B. C., when with the passing of the Ogulnian plebiscite all the personal aspirations of the plebeian leaders were finally realized, and the incentive to resist the authority of the governing class as a consequence began to fail, it was deemed necessary to embody a citizen's right to challenge the sentence of a magistrate in an official statute.² Although Heuss explains the date of the *lex Valeria* quite plausibly in this account, his general argument is open to severe criticism. The suggestion that the early consuls had no recognized right of *coercitio*, and therefore no means of imposing their will upon citizens within the city, is even more unacceptable than the view of the ancient tradition that such authority was restricted by the *ius provocationis*: in such circumstances little short of anarchy could have prevailed. But, even if this point be overlooked, Heuss still involves himself in difficulties in that he builds his entire case upon a close association in the sources between *provocatio* and the *ius auxilii*. If, as appears more probable, he believes that the abusive extension of *imperium* to the urban sphere was of comparatively late date, he cannot possibly accept such a connection, at least for the greater part of the period covered by Livy's account, as authentic. If, on the other hand, he means to imply that magistrates began to exercise the *ius coercitionis* as early as the fifth century, his construction lies open to a serious objection: for it can hardly be assumed that the unofficial flouting of authority embodied in the indiscriminate use of the *ius auxilii* would have

¹ For an admirable defence of this view, compare U. Coli, *Regnum* (Rome, 1951) *passim*.

² *art. cit.*, 118 ff.

been tolerated for over a century by a patriciate which showed itself ready to compromise even to its own detriment in other spheres, and whose consistent aim it was to oppose the emergence of the inner plebeian state.

Whether the coupling of *auxilium* and *provocatio* has in fact any historical foundation is of course another matter, and this must now be considered. That Livy on occasion introduced *provocatio* into his story purely to achieve consistency with his doctrine that a restraint had been imposed upon consular authority in 509 B. C., is beyond dispute. For evidence of this one need only refer to the account of the trial of Volscius,¹ and to the somewhat forced narratives of events in 495 and 472 B. C., where plebeian ringleaders are alleged to have appealed on being arrested for refusing to respond to the military levy.² In the first of these cases we find the paradoxical suggestion that the hearing before the *populus* was vetoed by tribunes, while in the other two there is no mention of an actual trial at all. For all this, however, it is by no means obvious that the incidents in which such references to *provocatio* appear are themselves entirely fictitious. They were clearly not invented, as was the archetypal case of Horatius, to illustrate the working of a recognized legal procedure, for in the picture which is presented of a clash between the consular authority and a rebellious mob *provocatio ad populum* and a *iudicium populi* are wholly out of place. It is indeed very possible that there was an original and authentic version of these stories, which told merely of an attempt on the part of the magistrate to enforce obedience and of resistance either by violence or by tribunician interference.³ But, if this view is to be consistently maintained, it must be taken further. In view of the fact that no trace remains of any reference in these cases to a death sentence or to a magisterial *accusatio*, Livy's decision to introduce the concept of formal *provocatio* into his narrative can only be explained by supposing that the early records made mention of a type of informal appeal which the historian because of his preconceptions all too readily misunderstood. That this was in fact the case is perhaps supported by a direct association between such an informal appeal and the pronouncement of the word *provoco* in a sentence put by Livy into the mouth of Publilius

¹ Livy III, 24,3.

² Livy II, 27,12; 55,4 ff. Cf. Dion. Hal. IX, 39, who makes no mention in the latter case of a formal *provocatio ad populum*.

³ In more settled times refusal to respond to the levy was punishable under the military *imperium* (cf. Mommsen, *Strafrecht*, 44), but it cannot legitimately be argued on this account that the stories are unhistorical. In the pre-Decemviral period at least, that is, before the tribunes received official recognition, the extent of their obstructive activity cannot possibly have been determined by any technical distinction between the *imperium militiae* and the *imperium domi*, even if such a distinction then existed. Compare the very strong tradition that interference with the levy played a major part in the tribunician campaign (Livy III, 10; 25,9; 30,5; 69 ff.; IV, 1,6; 30,15; 53,2; 55,1-5; VI, 27,9; 31,4; Dion. Hal. VIII, 87; X, 15,3; 20,4; 26,4; XI, 54,3).

Volero – *provoco et fidem plebis imploro*¹. The prevalence at some period of the practice of calling for active help from the assembled multitude is testified by Varro, who alludes to it in his definition of the archaic verb *quiritare*,² and there seems little reason to doubt that it represents in fact the first effective challenge offered to magisterial *coercitio*. In very early times the mob may be supposed to have responded by resorting to open violence: later, when the tribunate had fully developed, it will merely have indicated its wish that its officers should take the arrested man under their wing.³

It has already been emphasized that a situation in which magistrates were continually being thwarted in the exercise of their rightful duties cannot long have been endured. If tribunes were extending their *auxilium* to recalcitrant citizens as early as the first half of the fifth century, the abuse cannot possibly have remained unchecked until the end of the fourth. Some form of compromise must have been effected, and it is reasonable to assume that it embodied official recognition of a formal procedure which could be adopted in cases of appeal. It should be noted, however, that, so long as the admission of *provocatio* in any particular instance was not rendered compulsory, the *tribuni plebis* will still have played a major part in upholding the citizen's claims. Whatever may have been the common practice of magistrates after trial before the *populus* had been acknowledged as a legitimate procedure, admission of an appeal will only have been enforced by the at least potential threat of the tribunes to offer their *auxilium* to the accused⁴. Nothing brings this out more clearly than the fact that the *lex Valeria* was needed at a time when the tribunate had begun to be monopolized by the governing families⁵. To trace any authentic and unmistakable reference to the dependence of *provocatio* upon the *ius auxilii* in

¹ Livy II, 55.7 with § 5 – *provoco ad populum*. It is interesting that Dionysius (*loc. cit.*) speaks only of this appeal to the assembled throng and of the hand-to-hand fight which ensued. Cf. Livy IV, 14.4.

² *L.L.* VI, 68; *quiritare dicitur is qui quirritium fidem clamans implorat*.

³ So A. H. J. Greenidge, *Roman Legal Procedure* (London, 1901), 311.

⁴ Cf. Mommsen, *St.* I³, 277; L. Lange, *Römische Altertümer* (Berlin, 1856 –) I, 438ff.; II, 469; G. W. Botsford, *The Roman Assemblies* (New York, 1909), 242; J. L. Strachan-Davidson, *Problems of Roman Criminal Law* (Oxford, 1912), 112f., who, however, believe in the validity of the 'first' Valerian law, and therefore regard *auxilium* as a weapon which was used only after a legitimate appeal had been disallowed. That there was at one time an intimate connection between *provocatio* and *auxilium* is suggested further by the fact that, when the two *iura* received official recognition, they were both valid only in an area bounded by the *pomerium*.

⁵ It is unlikely that the *lex Valeria* had as direct a connection with the *lex Ogulnia* of the same year, as Heuss implies, although both laws must have reflected the same political development. Possibly it was occasioned by some recent harsh action on the part of a magistrate against one or more citizens who had been unable to find a tribunician champion. Compare Livy X, 9.4: *causam renovandae saepius haud aliam fuisse reor quam quod plus paucorum opes quam libertas plebis poterat*.

the annalistic tradition is admittedly difficult, perhaps because there were fewer cases of violent conflict in the more settled times which prevailed after the first fifty years of the Republic. It is possible, however, that it is reflected both in the formula which is alleged to have been used against the *imperium* of the dictator in 325 B. C. – *tribunos plebis appello et provoco ad populum*¹ – and in those numerous passages in Livy's account in which the two *iura* of *auxilium* and *provocatio* are coupled as bastions of popular liberty².

It may be objected that any such compromise as this, which in effect substituted trial by the timocratic *comitia centuriata* for tribunician protection could not have won general approval at the very height of the class struggle, that, however unsatisfactory the existing situation may have been, no arrangement could conceivably have been concluded until the principal aims of the tribunes had been realized. To argue along these lines is, I think, to overlook the very significant fact that the majority of Romans, of whatever class, appear to have been united in their allegiance to the community of which they were members. Loyalty to the state above all else was, at least in the earlier period of Rome's history, a national characteristic. Indeed, it is only in the light of the readiness and anxiety of patricians and plebeians alike to work together in an emergency that Rome's spectacular rise to greatness during a period of tense internal discord can possibly be understood. That there were individuals among the plebeian leaders whose personal ambitions were pursued to the national detriment is of course not to be denied; and it is true that, when in office, they possessed by virtue of their *sacrosanctitas* a full independent authority: but it must not be supposed that in this period they were ready to take strong and irresponsible action against the wishes of those whom they represented. As is abundantly clear from the annalistic account, they were dependent for the realizations of all their aspirations upon the goodwill of the mass of the *plebs*. Compromise was therefore the keynote of the Struggle of the Orders, compromise which began with the establishment of the *decemviri legibus scribundis*, and became progressively more favourable to the plebeian interest as the years went by. But at what stage in this development can a settlement first have been reached upon the issues raised by the organized flouting of magisterial authority? To this question, I think, the sources provide a definite answer.

If references to the *lex Valeria* of 509 B. C. be excluded, the first mention in the authorities of any restriction imposed upon the magistrate's right of *coercitio* is to be found under the year 454 B. C. By a consular *lex Aternia*

¹ Livy VIII, 33,8. Cf. III, 56,6: *nec in tribunicio auxilio Appius nec iudicio populi ullam spem habebat; tamen et tribunos appellavit et, nullo morante arreptus a viatore, 'provoco' inquit.*

² Livy III, 45,8; 48,9; 53,4; 67,9 etc.

Tarpeia of that year,¹ the terms of which were perhaps amended by a *lex Menenia Sestia* of two years later,² certain regulations were laid down concerning punishment by fining. A *multa maxima* was fixed, and, if the evidence of Dionysius may be accepted as authentic, the right of plebeian officers to impose fines was officially recognized. This measure has been interpreted by past scholars as a concession made by the patriciate to the plebeians.³ But to suggest that one class received the sole benefit is surely a mistake. As the decision to establish a Board of Decemvirs elected by the *comitia centuriata* to codify the law, so the *lex Aternia Tarpeia* must have been designed to ease tension by effecting an arrangement acceptable to both parties. The magistrates agreed to the restriction of their own power and at the same time gave official recognition to certain forms of tribunician jurisdiction; but they hoped to secure two things in return – their own right to fine within a certain limit without fear of tribunician interference, and the voluntary restriction of fines within that same limit by the tribunes. That the plebeians co-operated is at least indicated by the fact that it was thought worth while to carry a similar measure – in which the *multa maxima* was merely expressed in terms of cash rather than kind – some thirty years later.⁴

It has been suggested that any curbing of the right of a magistrate to impose fines must inevitably have been preceded by the official acknowledgement of the right of *provocatio* against the infliction of the death penalty⁵. This argument only holds good, however, if the *lex Aternia Tarpeia* recognized the *provocatio* procedure, that is, if it catered for the imposition of a fine higher than the *multa maxima* with popular approval.⁶ That it did so there is no suggestion whatever in the tradition; and the opinion that the later custom of bringing fining cases on appeal before the *populus*⁷ owed its origin to this measure is

¹ Dion. Hal. X, 50,2: πρῶτον μὲν οὖν ἐπὶ τῆς λοχίτιδος ἐκκλησίας νόμον ἐκύρωσαν ἵνα ταῖς ἀρχαῖς ἐξῇ πάσαις τοὺς ἀκοσμοῦντας ἢ παρανομοῦντας εἰς τὴν ἑαυτῶν ἐξουσίαν ζημιοῦν· τέως γὰρ οὐχ ἄπασιν ἐξῆν, ἀλλὰ τοῖς ὑπάτοις μόνοις. τὸ μὲντοι τίμημα οὐκ ἐπὶ τοῖς ζημιούσιν, ὅποσον εἶναι δεῖ, κατέλιπον, ἀλλ' αὐτοὶ τὴν ἀξίαν ὥρισαν, μέγιστον ἀποδείξαντες ὄρον ζημίας δύο βούς καὶ τριάκοντα πρόβατα. Cf. Cicero, *De Rep.* II, 60; Gellius XI, 1,2; Festus 237 M.

² Festus 237 M. De Sanctis, *o. c.* II, 54, and K. J. Beloch, *Römische Geschichte* (Berlin, 1926), 19, have argued that this was the only authentic pre-Decemviral measure on the subject. If this were so, it would not affect our conclusions.

³ Cf. Schwegler, *o. c.* II, 610; Lange, *o. c.* I, 455 f.

⁴ Cicero, *De Rep.* II, 60; Livy IV, 30,3.

⁵ Cf. K. J. Neumann, *R. E.* IV, 202.

⁶ For a defence of this view compare Schwegler, *o. c.* II, 612; Lange, *o. c.* I, 456 ff.; Greenidge, *o. c.*, 326; Strachan-Davidson, *o. c.* I, 170 ff.; H. Stuart-Jones, *Cambridge Ancient History* VII, 458; Ernst Meyer, *o. c.*, 62, 124. Against are Mommsen, *St.* I³, 159; Heuss, *art. cit.*, 107, n. 124; Siber, *Röm. Verf.*, 128.

⁷ Livy XXXVIII, 51,4; XL, 42,8; Cicero, *Philippics* XI, 18. Possibly relevant are Cicero, *De Legibus* III, 6; Polybius VI, 14,6.

probably quite without foundation. If, on the other hand, the principle of *provocatio* had not yet at this time been established, a decision on the part of the patriciate to begin by attempting to reach agreement with the plebeians upon fining is perfectly understandable. The right to inflict the death penalty was clearly a very much more difficult matter upon which to effect a compromise, if only because official recognition of the tribune's right to execute a citizen at will could not conceivably have been countenanced. Time will have been required by the patricians both to evolve a practical solution to the problem, and, if possible, to convince the *plebs* that they were genuinely concerned for the national safety and ready to make some sacrifice to secure the maintenance of good government. A very natural and reasonable answer to the question of relative date is in fact suggested by Cicero's express statement that the laws of the Twelve Tables recognized *provocatio ab omni iudicio poenaeque*. The Decemvirs, it may be proposed, not only recognized but were the first to formulate the *provocatio* procedure and so to inaugurate a system of jurisdiction which both satisfied the masses and at the same time safeguarded the prestige and authority of the magistrates.

This view that *provocatio* as a formal process dated only from the Decemviral period has already been expressed by Siber.¹ My own conclusions, however, differ from his in one very important respect; for, unlike him, I do not believe that any law of the Twelve Tables was responsible for modifying consular authority or for conferring the equivalent of a *ius provocationis* upon the *populus*. An alternative to summary jurisdiction was developed, but its employment was not rendered compulsory. The consul still remained technically free to refuse an appeal and to inflict punishment without trial. Such an interpretation not only accords to a greater extent with the tradition, but allows a more effective answer to be given to those who are sceptical of the value of Cicero's testimony.² If the provisions of the Twelve Tables had no direct connection with those of the later *lex Valeria*; if, that is, their purpose was not to enforce the use of the assembly as a court of second instance in certain specific cases, there is no reason to deny that they could have applied, as Cicero affirms, to cases other than those in which a capital penalty was involved. In other words, it is perfectly possible that, when the details of the *provocatio* procedure were first formulated, it was recognized simply as providing a legitimate, though not compulsory, alternative to the exercise of summary magisterial *coercitio* in a wide variety of cases, and perhaps throughout the whole field of criminal jurisdiction. It may further be noted in support of this thesis that Cicero apparently did not regard his reference to the terms of the Decemviral legislation as in any way contradictory of his acceptance of the annalistic tradition. If, as Siber maintained, he found provisions in the

¹ R. E. XXI, 177; *Röm. Verf.*, 45, 129.

² Compare Heuss, *art. cit.*, 116.

laws of the Twelve Tables, which, like those of the *lex Valeria*, specifically forbade the infliction of certain penalties without appeal, it would be difficult to explain how he could consistently have clung to the doctrine that the recognition of *provocatio* by a consul had been enforced in the first year of the Republic; and from this fact the view of Heuss that he did not draw his information first-hand from the laws of the Twelve Tables themselves might appear to derive support. If, on the other hand, he found references to a procedure which was to be adopted only in the event of an appeal being admitted, he could with perfect consistency hold the erroneous belief that its adoption in certain cases had already been rendered compulsory and that its more general use in others – *provocationes omnium rerum* – had been in fashion for some considerable time.

Further indication that the laws of the Twelve Tables provided for trial before the *populus* on appeal has been thought to be given by that best-known of all their enactments, which forbade the hearing of capital cases in any assembly other than the *comitiatus maximus* – *de capite civis nisi per comitium maximum . . . ne ferunto*.¹ The custom of bringing the more important trials before the *comitia centuriata* is clearly testified, and those who, subscribing to Mommsen's school of thought, regard all popular criminal jurisdiction as based upon previous *provocatio* against a magisterial sentence, must of necessity conclude that there is also here an implicit recognition of *provocatio* itself. Heuss, however, who believes that many criminal cases, including those brought by the tribunes, were heard by the *populus* acting as a court of first instance, and that no appeal was therefore involved, has argued that the clause can have had no possible reference to *provocatio*. Its purpose was merely to call a halt to the tribunician practice of bringing criminal cases before the *concilium plebis*, and, in order not to deprive these officers of their jurisdictional authority, to provide for them an alternative court in the *comitia centuriata*.² Short of attempting a full scale refutation of his fundamental position, we must accept this interpretation as a possible one; but there still remains a vital point which cannot be ignored. If plebeian acceptance of the restrictions placed upon the authority of the tribunes by the Decemviral legislation is to be understood, it must be supposed that the patriciate made concessions in return. The tribunes can only have been induced to observe the law, as some years earlier they had been persuaded to accept the terms of the *lex Aternia Tarpeia*, by some show of readiness to compromise on the part of the governing oligarchy. The *comitia centuriata*, therefore, must have been recognized as the body competent to hear not only cases brought before it by the tribunes but also those submitted on appeal from the sentence of a magistrate. That the

¹ Cicero, *De Legibus* III, 11. Cf. *De Domo*, 43; *Pro Sestio*, 65, 73; *De Rep.* II, 61; *De Leg.* III, 44.

² *art. cit.*, 115 ff. Such appears also to be the interpretation of Brecht, *art. cit.*, 295 ff.

consul was as yet under no legal obligation to grant *provocatio* will have meant very little, for the tribunes still possessed in the *ius auxilii* the means wherewith to force his hand if the occasion demanded. In effect, if not in theory, both the usurped authority of the tribune and the rightful authority of the patrician magistrate may be said to have been subjected by the Decemvirs to the will of a new sovereign – the *populus*.

This emphasis upon the *populus* as a concept by reference to which the clash between patriciate and *plebs* could be resolved appears indeed to have been a notable feature of the earlier stages of compromise. Nowhere is it more clearly evident than in the Valerio-Horatian legislation of 449 B. C. As I have argued elsewhere,¹ the consuls of that year met the protests of the plebeian body against the measures of the Decemvirs not by making more radical concessions than those incorporated in the laws of the Twelve Tables, but by applying the principle therein embodied to other spheres of conflict. The tribunes and aediles of the *plebs*, originally set up as rivals to the patrician magistrates, were given a part to play in the service of the *populus*, and, if not technically transformed into *magistratus populi*, were at least afforded official recognition. In like manner the resolutions introduced before the *concilium plebis* by these same officers were acknowledged as equal in force with measures carried under magisterial presidency in the *comitia* of the *populus*. Admittedly, the *auctoritas patrum* had to be given before they could become law, and that might not readily be afforded, but it was the principle which underlay the change which was important. Apparently the mass of the *plebs* was ready to abandon its own claim to sovereignty provided that in so doing it could take its place in what was at least a partially sovereign *populus*.

A detailed investigation into the exact nature of the procedure formulated by the laws of the Twelve Tables is outside the scope of this article. There is one matter germane to that subject, however, which can hardly be dismissed as totally irrelevant to the present discussion – that is, the part played by the quaestor in criminal trials. On the institution of the quaestorship Pomponius has the following words – *quia de capite civis Romani iniussu populi non erat lege permissum consulibus ius dicere, propterea quaestores constituebantur a populo qui capitalibus rebus praeessent: hi appellabantur quaestores parricidii, quorum etiam meminit lex XII tabularum*.² He makes here two highly significant statements of fact: first, that the Twelve Tables expressly referred to *quaestores parricidii*,³ and second, that the first appointment of these officers by the *populus* was in some way directly connected with the institution of *provocatio*. In the light of the conclusions which have so far been reached concerning the

¹ 'Tribal Assemblies before the *Lex Hortensia*', *Athenaeum* XXXIII (1955).

² *Digest*, I, 2, 2, 23.

³ Cf. Festus 258 M: *quaestores dicebantur qui quaererent de rebus capitalibus, unde iidem etiam in XII tabulis quaestores parricidii appellantur*.

date of this latter event, it is extremely tempting to connect the words of Pomponius with the well-known evidence of Tacitus that quaestors were first popularly elected in 447 B. C.¹ Admittedly, the jurist refers election by the *populus* to the year in which magisterial *coercitio* was first restricted by law, and so, as he accepted the spurious annalistic tradition on this point, to 509 B. C.; but that this date rather than that of Tacitus is the correct one has no support from any other source, and it is perfectly evident that a more genuine tradition which he is following merely associated popular election with the institution of a form of criminal trial based on previous appeal. Any verdict upon the early history of the quaestorship must, as has often been pointed out, be extremely speculative in character; but it is my own opinion that by taking the evidence of Pomponius and Tacitus in close conjunction in this way one can effect a reconstruction which neither offends common sense nor clashes violently with any of the various ancient accounts. The *quaestor parricidii*, it may be said, was an officer appointed at first by the consul; and possibly even earlier by the king, perhaps not annually or with any regularity, but as occasion demanded, for the undertaking of a particular task.² His duties will have been of a purely investigatory character,³ and his work will have been completed when he had reported to his superior upon his findings. When the Decemvirs came to consider the details of a procedure for trying citizens before the *populus*, however, they will have decided, whether for reasons given by Mommsen,⁴ or for the more obvious reason that a consul could not afford to spend the time over such matters, to confer the responsibility for calling the *comitia* and for conducting certain cases before them upon the quaestors – a very natural choice in view of the nature of their earlier duties. Hence the references to the *quaestores parricidii* in the laws of the Twelve Tables, which no doubt appeared in the very *provocatio* clauses to which Cicero referred.⁵ At first, perhaps, no change was envisaged in the method by which they were to be appointed, but, as soon as it was realized that their heavier responsibilities would necessitate the establishment of the office on a permanent basis, and that their main concern in the future would

¹ *Annals* XI, 22.

² Ulpian, *Digest*, 1.63, 1 *pr.*; Plutarch, *Poplicola* 12; Tacitus, *Annals* XI, 22. Compare K. Latte 'The Origin of the Roman Quaestorship', *Transactions of the American Philological Association* LXVII (1936), 25 f.; Heuss, *art. cit.*, 98.

³ Festus 221 M: *parricidii quaestores appellabantur qui solebant creari causa rerum capitalium quaerendarum. Nam parricida non utique is qui parentem occidisset dicebatur sed qualemcumque hominem indemnatum* – cf. 258 M. This is no doubt the correct derivation of the word. It should, however, be noted that Pomponius is thinking of an altogether different activity when he speaks of those *qui capitalibus rebus PRAEESSENT*.

⁴ He believed that it was because a consul's prestige would be damaged by any reversal of his sentence (*St. II*³, 150).

⁵ So Siber, *R. E.* XXI, 179; *Röm. Verf.*, 96.

be with the *comitia centuriata*, a general clamour for their election by that same assembly cannot have been long delayed.¹ It may be suggested that the change was effected in fact by yet another law of the consuls of 449 B. C., whose aim, as has been affirmed, was to ensure the closer co-operation of the plebeian body by laying emphasis upon the all-importance of the *populus*.

It will be recognized that this entire reconstruction runs counter to two fundamental doctrines concerning the early role of the quaestors, both of which are current in contemporary scholarship. The first of these, which asserts that the officers first elected in 447 B. C. were financial quaestors who bore no relation to the earlier *quaestores parricidii*, need not detain us long. The arguments of its most recent exponent,² despite his ingenious suggestions on questions of etymology, are hardly convincing. Both Varro³ and Zonaras⁴ identified the two types of quaestor, and it is impossible but to agree with Mommsen that the evidence of the only authority who appears to have dissented from this opinion, Pomponius, is rendered worthless by his acknowledgement that *quaestores parricidii* were popularly elected.⁵ The second doctrine is a more far-reaching one. It affirms that the quaestor was concerned only with cases arising out of certain breaches of the criminal code, and that all such cases were heard by the assembly acting as a court of first instance and not as a court of appeal.⁶ To deal with this theory fully, dependent as it is upon the rejection of Mommsen's conception of the true basis of all criminal procedure, is of course here impossible. It must suffice merely to emphasize that it is in flagrant conflict with the beliefs of those among the ancients who should have been as well acquainted as any with the workings of the law. Pomponius, as has been seen, acknowledged a direct causal connection between the institution of the *provocatio* procedure and the quaestors' duties in capital cases. Cicero appears to have been equally certain that a common breach of the criminal law rendered the offender liable to summary punishment by a magistrate, and that his case, if heard by the *populus*, was heard only on appeal. This is

¹ In later times, of course, quaestors were elected in the *comitia tributa*, but it need not be supposed that this practice dated from 447 B. C. Perhaps, as I have suggested elsewhere (*Journal of Roman Studies* XLIII (1953), 34), the change of assembly was effected in 421 B. C.

² Latte, *art. cit.* Compare for this view Schwegler, *o. c.* II, 134 ff.; J. N. Madvig, *Die Verfassung und Verwaltung des römischen Staates* (Leipzig, 1882), I, 438; Heuss, *art. cit.*, 102.

³ *L. L.* V, 81.

⁴ VII, 13.

⁵ *St. II*³, 538, n. 2. Among others who accept that the later criminal quaestors were a development from the *quaestores parricidii*, compare O. Karlowa, *Römische Rechtsgeschichte* I, (Leipzig, 1885) 257; Greenidge, *o. c.*, 309; De Sanctis, *o. c.* I, 418; Stuart-Jones, *C. A. H.* VII, 446; De Francisci, *o. c.* I, 216; Ernst Meyer, *o. c.*, 36.

⁶ Heuss, *art. cit.*, 100 ff. Latte goes so far as to suggest that quaestors undertook no trials except in their capacity as treasury officials, but in doing so he not only lays himself open to the objections mentioned in the text, but is forced to make quite unwarranted assumptions concerning the case of 242 B. C. which is detailed by Varro (*L. L.* VI, 90-2).

abundantly clear from his account of the *decemvir sine provocatione*, C. Julius, who, finding a corpse dug up in the house of a certain L. Sestius, waived his legal right to inflict a punishment without reference to the *populus*, and passed the matter on to the *comitia centuriata*.¹

It remains now merely to focus our attention upon a few discordant elements in the ancient tradition to which little heed has as yet been paid, and, if possible, to show that they are not in any way damaging to our thesis. The first of these is a reference to a primitive procedure employed in cases of *perduellio*, which catered for the pronouncement of a verdict by *duoviri* and, in the event of a condemnation, for subsequent *provocatio* and trial before the *populus*.² It will be recognized that, if *provocatio* was admitted as a genuine constituent of the *duoviral* process from the time of its origin, as there is little reason to deny,³ the latter cannot have been a feature of criminal jurisdiction during the regal period. It is therefore a reasonable enough assumption that it was outlined for the first time in the laws of the Twelve Tables as an alternative to be employed in cases of particular public concern, when more responsible and perhaps speedier action was desirable.⁴ Its inclusion therein would admirably explain how both those who staged the trial of Rabirius and the Roman annalists in general came to have detailed knowledge of a procedure which was last known to have been employed as early as 384 B. C.;⁵ while the nature of the penalty prescribed, crucifixion upon an *infelix arbor*, is in perfect accord with that of others ordained by the same code. Furthermore, it may be noted that the acceptance of such a late date makes it possible to provide a very reasonable explanation of the tradition that quaestors were responsible for the prosecution of Spurius Cassius on a charge of *perduellio* in 485 B. C.⁶ The reference to a trial before the *populus* is clearly an anachronism; but, if it may be said that at this time investigations even into cases of *perduellio* fell within the terms of reference of the *quaestores parricidii* rather than of the *duoviri*, the allusion to the implication of quaestors in the proceedings may well be genuine.⁷ One

¹ *De Rep.* II, 61: *C. Iulii qui hominem nobilem L. Sestium, cuius in cubiculo ecfossum esse se praesente mortuum diceret, cum ipse potestatem summam haberet quod decemvirum unus sine provocatione esset, vades tamen poposcit, quod se legem illam praeclaram neglecturum negaret, quae de capite civis Romani nisi comitiis centuriatis statui velaret.* Cf. Livy III, 33, 10. The authenticity of the story is irrelevant to the present argument.

² Livy I, 26; Festus 297 M.

³ Compare, however, Heuss, *art. cit.*, 102 ff.

⁴ This view that the *duoviri perduellionis* were of comparatively late institution is held by Brecht, *art. cit.*, 293 ff., and Siber, *Zeitschrift d. Sav.-Stift.*, 1942, 385. That the laws of the Twelve Tables concerned themselves with *perduellio* is suggested by Marcianus, *Digest*, 48, 4, 3: *lex XII tabularum iubet eum qui hostem concitaverit quive civem hosti tradiderit capite puniri.*

⁵ According to one version of the Manlius trial – Livy VI, 20, 12.

⁶ Livy II, 41, 11; IV, 15, 4; Dion. Hal. VIII, 77 f.; IX, 1, 51; Cicero, *De Rep.* II, 60.

⁷ Cf. Siber, *Zeitschrift d. Sav.-Stift.*, 1942, 381, 385; Röm. Verf., 97.

has no longer to accept that Livy or his sources quite inexplicably *invented* quaestorian participation in a matter which in their own view had from time immemorial been the concern of the *duoviri perduellionis*.¹

The second of these incongruities in the annalistic account is the inclusion of a law *ne quis ullum magistratum sine provocatione crearet* in the Valerio-Horatian programme. This measure has been the subject of much controversy in the past, some scholars contending that its purpose was to render dictators as well as consuls liable to *provocatio*,² others retaliating by laying emphasis upon the use of the verb *creare* rather than *dicere*.³ There can be little doubt, however, that these arguments are totally irrelevant. The current tradition in the late Republic concerning the activity of the Decemvirs, moulded as it was by the influence of legend, affirmed that these extraordinary magistrates had possessed absolute authority. It was because of this that the annalists, who erroneously believed that the *ius provocationis* against the consuls dated from the first year of the Republic, invented a clause in the terms of appointment of the Decemvirs to the effect that they should hold office *sine provocatione* and yet another in the measure authorizing the reinstitution of the consulship which reasserted the claim of the *populus* to rights which had temporarily lapsed.⁴ The *lex Valeria-Horatia* must be regarded as equally fictitious, the embodiment of a quite unhistorical demand that a magistracy so autocratic as the Decemvirate should not be renewed.⁵

Finally, we have to consider the tradition that the power of the dictator exceeded that of the consul by virtue of the fact that the former, unlike the latter, was peculiarly free from the restraints of either *provocatio* or the tribunician veto. That this doctrine has a ring of artificiality about it should at once be obvious.⁶ The tribune's right of veto was based wholly upon a usurped authority, and was rendered effective only because of a constant threat on the part of the masses to resort to violence. The suggestion, therefore, that it received any recognition in the official definition of the powers of a *magistratus*

¹ Such is the difficulty which has to be met by Münzer (*R. E.* III, 1752) and Latte (*loc. cit.*), if they accept the alternative tradition that Cassius was condemned to death by his own father (Val. Max. V, 8,2; Livy II, 41,10).

² Cf. Schwegler, *o. c.* II, 121, n. 1; III, 71.

³ Cf. Lange, *o. c.* I, 469; Karłowa, *o. c.* I, 117.

⁴ Livy III, 54,15: *confestim de consulibus creandis cum provocatione M. Duillius rogationem pertulit*.

⁵ The fact that this law is not authentic does not affect the trustworthiness of the rest of the Valerio-Horatian legislation (cf. *Athenaeum*, 1955, *art. cit.*). Its interpolation in a genuine programme would be perfectly understandable in the circumstances, and there is no need to defend the tradition by saying that its content was entirely different from that which is reproduced by Livy (so Siber, *Die plebejischen Magistraturen* (Leipzig, 1936), 21, 63 ff.).

⁶ This has been fully appreciated by Siber, *Zeitschrift d. Sav.-Stift.*, 1942, 379 ff., and A. Dell'Oro, *La formazione dello stato patrizio-plebeo* (Milan, 1950), 121 ff.

populi is quite absurd. There can be no doubt that, if he so desired and if he felt sufficiently secure, a tribune could and perhaps did obstruct the dictator in the exercise of his authority.¹ The same argument applies to the question of *provocatio*. A dictator's right of *coercitio*, like that of the consul, will have been free from any legal restrictions in the early Republic, but it will have been equally subject to any unofficial restraints imposed by the use of the tribunician *ius auxilii*.² How then is the strong tradition to the contrary to be explained? The answer is possibly to be found in the entry of Festus under '*optima lex*', where we are told that a dictator was said to be appointed *optima lege* only when he enjoyed the fullest possible authority, and that this epithet fell into disuse as soon as his power was restricted by the *ius provocationis*.³ Clearly, if this definition, which there is no reason to doubt is the correct one,⁴ was known to the annalists, it can be held entirely responsible for their portrayal of the early dictatorship. If they believed as they did that the consuls had been subject to *provocatio* from 509 B. C., and at the same time knew that dictators were for a considerable period free from any such restraint, it needed little imagination to explain the appointment of the latter as designed to overcome any resistance which might have been offered to the authority of the former.⁵ In fact the jurisdictional competence of the dictator will in all probability have been officially restricted at precisely the same time as that of the consul – by the only authentic *lex Valeria* of 300 B. C.⁶

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¹ Cf. Livy VI, 38,9; VII, 3,4; 21,2; IX, 26,8; Plutarch, *Camillus* 39.

² Cf. Livy VIII, 33. The story here reproduced, if it is in its outlines authentic, suggests that at this time a dictator might be forced by public opinion to submit to *provocatio* even against the *imperium militiae*.

³ 198 M: *optima lex* ... in magistro populi faciundo, qui vulgo dictator appellatur, quam plenissimum posset ius eius esse significabatur ut fuit Mani Valerii M. f. Volusuinæ gentis, qui primus magister a populo creatus est. Postquam vero provocatio ab eo magistratu ad populum data est, quæ antea non erat, desitum est adici 'ut optima lege', ut pote imminuto iure priorum magistratuum.

⁴ Siber argues that the epithet *optima lex* had reference to the functions of the dictator, and that it was therefore only applicable to the dictator *rei gerundæ causa* (*Zeitschrift d. Sav.-Stift.*, 1942, 381 f. – cf. Lange, *o. c.* I, 549 f.; Beloch, *o. c.*, 38 ff.). But even if this be so, there is little real basis for the suggestion that Festus is wrong in connecting the complete disappearance of the dictator *optima lege* with the recognition of a *ius provocationis*. The latter event marked the first restriction imposed upon the dictator's technically unlimited authority, for earlier, unlike the consul who had always been subject to the veto of his colleague, he had enjoyed the absolute power of a monarch.

⁵ Cf. Livy II, 29,11–12; 30,5; III, 29,6; IV, 13,11; VI, 16,3; Dion. Hal. V, 70.

⁶ Cf. among others Mommsen, *St. II*³, 165; Greenidge, *o. c.*, 319.

THE DIARY AND THE LETTERS OF ALEXANDER THE GREAT*

I. The Diary

The histories of Alexander's campaigns written by his contemporaries have not survived intact¹; it is, therefore, a matter of special concern to every student of Alexander to find out what sources were used by the later writers who offer continuous narratives of the expedition — Arrian, Plutarch, Diodorus, Quintus Curtius, and Justin. Justin's brief summary is of little value to the critical historian; and Diodorus and Quintus Curtius, who frequently agree in details, are almost certainly both dependent, directly or indirectly, on the romantic and rhetorical account of Cleitarchus². These three writers tell us nothing themselves about their sources or their critical methods; Plutarch, on the other hand, cites a large number of authors, but, as he says himself, he is writing "not histories but *Lives*";³ he makes no claim to be critical of his sources, and any anecdote which illustrates some aspect of Alexander's character is welcome to him

* Bibliographical note.

The following abbreviations will be used:

F. Gr. Hist. — Felix Jacoby, *Die Fragmente der griechischen Historiker* (Berlin & Leiden, 1923 —).

Berve, Alexanderreich — Helmut Berve, *Das Alexanderreich auf prosopographischer Grundlage* (Munich, 1926).

Kornemann, Ptolemaios — Ernst Kornemann, *Die Alexandergeschichte des Königs Ptolemaios I. von Ägypten* (Leipzig — Berlin, 1935).

Merkelbach, Alexanderroman — Reinhold Merkelbach, *Die Quellen des griechischen Alexanderromans* (Zetemata 9, Munich 1954).

Robinson, H. A. — Charles Alexander Robinson Jr., *The History of Alexander the Great*, vol. 1 (Brown University Studies 16, 1953).

Schachermeyr, Alex. — Fritz Schachermeyr, *Alexander der Große* (Graz — Salzburg — Vienna, 1949).

Tarn, Alex. — Sir William Tarn, *Alexander the Great* (Cambridge, 1948).

¹ The Testimonia (T) and Fragmenta (F) of these various historians — Callisthenes, Onesicritus, Nearchus, Aristobulus, Ptolemy, Cleitarchus, and the rest — as well as the evidence about the Diary and the Bematistae are collected in F. Gr. Hist. IIB (with commentary in IID); and they are translated by Robinson, H. A. 1. 30—276.

² Cf. Jacoby, RE s. v. Kleitarchos (2). The view of Tarn (Alex. 2. 63—91) that Diodorus used a number of different sources in Book 17 is not convincing to me; the question cannot be argued here, but a fresh discussion of the whole issue is now needed (cf. T. S. Brown, "Cleitarchus", *AJP* 71 (1950) 134—155).

³ Alex. 1. Plutarch may not have a direct acquaintance with all the works that he cites. J. E. Powell, "The Sources of Plutarch's Alexander", *JHS* 59 (1939) 229—240, thinks he has read very few of them and that he depends almost entirely on a "variorum" source. This is an extreme view; a well-read man like Plutarch is certainly likely to have read the works on Alexander which were discussed in philosophical circles — those of Callisthenes and Onesicritus, to say nothing of the others.

no matter from what source it comes. Arrian, like Plutarch, points out that many divergent accounts of Alexander have been written — “there is no one about whom more people have written or with greater disagreement among themselves;” but he announces his intention of following two sources, Ptolemy and Aristobulus, accepting their word without any question when they are in agreement and, when they disagree, choosing the version which seems to him “more convincing and more worth the telling.” He explains his preference for these two authors as follows: “Ptolemy and Aristobulus seemed to me more trustworthy sources for my narrative — Aristobulus because he took part in the expedition with King Alexander, and Ptolemy because not only did he take part in the expedition but, being a king himself, it would have been more shameful for him to tell lies than for another man; and because they both wrote when Alexander was already dead and there was no compulsion or incentive for them to record events otherwise than as they actually happened” (*Anab. proem.*).

Modern critics have always treated Arrian’s *Anabasis* with greater respect than other extant accounts of the expedition; but they have not been satisfied with the reasons which he gives for his special faith in Ptolemy and Aristobulus. He could have consulted other works by authors who accompanied Alexander on the expedition, and none of these authors except Callisthenes gave their work to the world until after Alexander’s death; and only a Stoic, cherishing high ideals of kingship, could be seriously influenced by the special obligation of a king to tell the truth⁴. In fact Arrian’s own narrative, with its wealth of military and administrative detail, is a better testimonial to the accuracy of his sources than the arguments he offers in his introductory chapter. This is particularly true of Ptolemy; by showing the part which he played as one of Alexander’s officers, Arrian makes it clear how well qualified he was to describe the expedition. He seems not to have played any very important part until after the battle of Gaugamela, but thereafter he frequently appears in command of special detachments and in charge of different missions; and the accounts of military operations for which Ptolemy bears personal responsibility are notable for their exact detail and their graphic quality.⁵

Although Ptolemy, as one of Alexander’s marshals and founder of the Ptolemaic dynasty in Egypt, is an important historical figure, very little is known of his literary work apart from what Arrian tells us, explicitly or implicitly, in

⁴ Perhaps Ptolemy himself insisted on his honour as a king; in the Letter of Aristeas, 206, Ptolemy II is told that lying brings special shame to a king; can this mean that the Ptolemaic theory of kingship insisted on the king’s obligation to tell the truth? Cf. Pindar, *Py.* 1. 86—88 and Xen. *Anab.* 7. 7. 23—24.

⁵ For good examples see Arr. *Anab.* 4. 22, 7—30, 7 and 5. 21—24. For his first independent command see 3. 18, 9; for the capture of Bessus (an important special mission) see 3. 29, 6—30, 5.

his *Anabasis*.⁶ Arrian tells us enough, however, to establish his reputation as an accurate and intelligent military historian⁷. Critics are not equally unanimous about the merits of Aristobulus, and little or nothing is known about his life and character except for the part he played during the expedition⁸. Alexander entrusted him with some interesting commissions — the restoration of the tomb of Cyrus the Elder and an investigation which seems to be connected with flood-control in India⁹. Such commissions suggest that he was a "technical man," qualified as an architect and engineer, rather than a military officer¹⁰. But since he did not write his book until the closing years of his long life¹¹, it has been argued that he is really more like a secondary than a primary source and that when he offers less dramatic versions of famous events he is rationalizing the romantic account of Cleitarchus and not drawing upon the memory of his own experiences¹². Tarn has protested vigorously against this view¹³ and the question is a complex one which cannot suitably be discussed except within the framework of a more general discussion of the lost histories of Alexander. In fact, for the purposes of the present article it is not necessary to take sides in the controversy over the reliability of Aristobulus and his relation to Cleitarchus. It is enough for the moment to point out that Arrian, rightly or wrongly, thought him a trustworthy historian with an accurate memory of his own experiences and worthy to rank side by side with Ptolemy.

Since Arrian records numerous military and administrative details that are not mentioned by Plutarch or Diodorus or Quintus Curtius, many modern critics are disposed to believe that Ptolemy, and perhaps also Aristobulus, had access to some documentary source from which one or both of them could

⁶ The fragments in F. Gr. Hist. IIB (no. 138) include a few citations in Plutarch and Strabo and some references of very doubtful accuracy in Synesius, Stephanus of Byzantium, and the Ravenna geographer (F. 5, 11, 31—33).

⁷ Somewhat exaggerated praise will be found in Kornemann, Ptolemaios (esp. 35—37), who looks upon him as a second Thucydides; there is in fact no evidence that Ptolemy was more than an acute observer and a good reporter; any conclusions about his insight or his gifts of interpretation are extremely precarious.

⁸ For possible new evidence see L. Pearson, "Aristobulus the Phocian", AJP 73 (1952) 71—75.

⁹ Arr. Anab. 6. 29, 10; Strabo 15. 1, 19 (F. Gr. Hist. IIB, no. 139, F. 51, 35).

¹⁰ Cf. Berve, Alexanderreich, 2. 64; Tarn, Alex. 2. 38—42.

¹¹ According to T. 3 — [Luc.] Macrob. 22 he lived to the age of ninety and said himself at the beginning of his history that he was eighty four years old; probably, then, he is writing of events that took place thirty or forty years earlier. There is no such definite proof that Ptolemy wrote in the closing years of his life (cf. Jacoby, F. Gr. Hist. IID 499); but Arrian seems to believe that he wrote later than Aristobulus (Anab. 5. 14, 3—6).

¹² Droysen, Geschichte des Hellenismus, ed. 2, Beilage 2, 389—394 (the Beilagen are not printed in the new 1953 edition); Schwartz, RE s. v. Aristobulos (14); Jacoby RE s. v. Kleitarchos (2). Cf. Berve, Alexanderreich 2. 65; Schachermeyr, Alex. 126—135.

¹³ Tarn, Alex. 2. 1—133; cf. F. Wenger, Die Alexandergeschichte des Aristobul von Kassandrea (Diss. Würzburg, 1914).

refresh a waning memory. Arrian never gives any hint of such a document until he comes to describe the last days of Alexander's life, when, without warning, he quotes from "The Royal Diary" (αἱ βασιλικοὶ Ἐφημερίδες). Plutarch also tells us that "the account of his sickness is given as follows in the Royal Diary;" and he claims to be quoting "*verbatim* for the most part" (τὰ πλεῖστα κατὰ λέξιν), writing in *oratio recta* whereas Arrian quotes in the accusative and infinitive construction. His language is similar but not identical with Arrian's; he omits some incidents and occasionally differs in detail. Arrian's account is as follows¹⁴ (significant discrepancies, but not omissions or abbreviations in Plutarch's version will be noted as they occur):

"The Royal Diary records as follows: That he drank with Medius after taking part in the *komos*; that he then withdrew, took a bath and slept; then dined with Medius again and drank far into the night; after leaving the party he took a bath; and after the bath took something to eat and slept there¹⁵, because he was already feverish. He was carried out on a couch to the sacrifices and sacrificed, as was his daily custom, and after offering the victims lay resting in the men's quarters until dark. During this time he made arrangements with his officers about the journey by land and sea, ordering the land party to make ready for the fourth day and the party sailing with him to be ready on the fifth day. Then he was carried to the river on his couch, went on board a boat, and crossed the river to the park, where again he took a bath and rested. Next day he took a bath again and sacrificed as usual; he went into the bedchamber and lay there chatting with Medius¹⁶; and he also gave orders for his officers to attend at dawn.

'After doing this he took a little dinner, was carried back into his bedchamber and suffered continuously from fever the whole night long. Next day he took a bath and sacrificed after his bath. He gave orders to Nearchus and the other commanders, arranging for the voyage to start on the third day¹⁷. Next day he took a bath again and made the sacrifices as arranged, and after offering the victims was not sleepy as he was feverish; but despite his fever he summoned

¹⁴ Arr. Anab. 7. 25, 1—26, 3. The two versions are given in parallel columns in F. Gr. Hist. IIB no. 117, together with the other Fragmenta and Testimonia of the Diary.

¹⁵ Plutarch, in clearer language, says ἐκάθευδεν ἐν τῷ λουτρῶνι, and adds the date — the 18th of Daisios.

¹⁶ Plutarch says they spent the day playing dice.

¹⁷ Plutarch, who omits the previous conference and all future planning for this voyage, says here that he listened to Nearchus reporting on his voyage (κατακείμενος ἐν τῷ λουτρῶνι τοῖς περὶ Νέαρχον ἐσχόλαζεν, ἀκροώμενος τὰ περὶ τὸν πλοῦν καὶ τὴν μεγάλην θάλασσαν). According to Arrian Nearchus had long since been rewarded with a distinguished bride and a golden crown at Susa (Anab. 7. 4., 6; 5, 6; Ind. 42, 9). The implication is that he had rendered a full report of his voyage by this time. Plutarch, on the other hand, represents Nearchus as not rejoining the king until he reaches Babylon (Alex. 73). Tarn, Alex. 1. 120, takes it for granted that Arrian's version is historically correct; Berve, RE s. v. Nearchos (3), 16. 2134, tries to combine the two versions.

the commanders and gave orders for everything to be ready for him to set sail. In the evening he took a bath and after the bath was now really ill. Next day he was moved into the building by the swimming pool and made the appointed sacrifices; although he was not well, he called in the leading members of his staff just the same and again gave orders about the voyage¹⁸. Next day, though he was now very ill, he nevertheless made the appointed sacrifices. He ordered the generals to wait in the court, chiliarchs and pentacosiarachs outside the doors. He was now very weak and was removed from the park to the palace; and when the commanders came in he recognized them but could not speak, as he had now lost his power of speech; he had a high fever during the night and the day, and next night and next day.'

"Such is the account in the Royal Diary; and that next the soldiers were seized with a desire to see him, some because they hoped to see him still alive, others because the report was spreading that he was already dead and they suspected (as I imagine) that his death was being kept secret by the Bodyguards; but the majority insisted on seeing Alexander out of grief and longing for their king. And they say that he was unable to speak when the army marched past, but greeted them individually, just managing to raise his head and make some sign to them with his eyes.¹⁹

"And the Royal Diary says that Peithon and Attalus and Demophon and Peucestas went to sleep in the temple of Sarapis (and also Cleomenes and Menidas and Seleucus) and that they asked the god if it were better and more profitable for Alexander to be brought into the god's temple and after making supplication to receive treatment at his hands; and a voice was heard coming from the god saying not to bring him into the temple, but that it would be better for him if he remained where he was. The Companions reported this and soon afterwards Alexander died, as though this was what the god meant by the "better" thing²⁰."

Arrian adds that neither Aristobulus nor Ptolemy has anything different from (or further than)²¹ what the Diary gives, and he goes on to give some additional details included in the current or "vulgate" account (τὰ λεγόμενα) which he does not think worthy of belief.

¹⁸ According to Plutarch this conference was about new appointments (διελέχθη περὶ τῶν ἐρήμων ἡγεμονίας τάξεων, ὅπως καταστήσωσι δοκιμάσαντες).

¹⁹ Plutarch, without Arrian's expression of opinion and appearance of paraphrase, writes simply: "Accordingly even the Macedonians thought he was dead and coming to the doors started shouting and threatening the Companions, until they prevailed on them to be admitted; and when the doors were opened for them, wearing their chitons they all marched past the couch one by one and went out."

²⁰ Plutarch is much briefer, but he gives the time and date of his death: τῇ δὲ τρίτῃ φθίνοντος πρὸς δελφὴν ἀπέθανε. The comment that the god thought it "better" for Alexander to die is probably an addition of Arrian himself — borrowed from Xen. Apol. 5.

²¹ οὐ πόρρω δὲ τούτων. For the meaning of this ambiguous phrase see below p. 437-38.

Neither Arrian nor Plutarch says where he found the text of the Diary, but they are not the only writers to quote from it. Plutarch, in an earlier chapter of his life of Alexander (23) remarks that Alexander frequently hunted foxes and birds for amusement, "as can be gathered from the Diary." This looks like a conclusion from a number of different passages. He also says the Diary does not bear out the theory that Alexander lingered over his wine while drinking little, because it is recorded there continually and frequently that he "spent this day sleeping after his drinking" and sometimes "the following day also"²². Athenaeus (10. 434 B) makes the same point: "Alexander drank a great deal, so that after a drinking bout he would sleep continuously for two days and two nights. This is shown in his Diary, which was written by Eumenes of Cardia and Diodotus of Erythrae." Aelian likewise refers to the record kept by Eumenes of Cardia for Alexander's drinking parties, and the sentences which he quotes are in the same style as the account of his last illness, giving dates: "On the fifth day of Dios(?) he drank with Eumaeus(?), then on the sixth slept after the drinking bout; the only sign of life he gave on that day was to rise from his bed and discuss the next day's march with his officers, saying that it was to begin early. On the seventh he dined with Perdikkas, and drank again; and on the eighth he slept. On the fifteenth of the same month he drank again and on the following day behaved as usual after a drinking bout. On the twenty fourth he dined with Bagoas (the house of Bagoas was ten stades from the palace), and on the next day but one he was still sleeping."²³

Whatever view one may hold concerning the amount of paper work carried on at Alexander's headquarters during the expedition²⁴, there is certainly no reason to doubt that some kind of diary was kept, recording the events of each day, the king's conferences, the orders he issued, the reports he received, and so on (though the record of his drinking and its after-effects is hardly what one would expect to find in it).²⁵ And Eumenes, the "chief secretary," is the logical

²² Quaest. Conviv. 1. 623 E.

²³ Aelian VH 3. 23. The text is uncertain in several places; perhaps the month should be Daisios, instead of Dios (the MSS. write δι' οὗ) and the name Eumaeus is probably a mistake. The text of Aelian continues: δυοῖν οὖν θάτερον, ἢ Ἀλέξανδρος κακῶς τοσαύτας τοῦ μηνὸς ἡμέρας ἑαυτὸν ζημιοῖ διὰ τὸν οἶνον ἢ οἱ ταῦτα ἀναγράψαντες ψεύδονται. ἔξεστι δὲ ἐκ τούτων ἐννοεῖν καὶ τοῦ λοιποῦ χρόνου τὰ ὅμοια αὐτοῦς λέγοντας, ὣν καὶ Εὐμένης ὁ Καρδιανὸς καὶ τέκεῖνός ἐστι. Whatever the correct reading is, the reference to Eumenes shows that Aelian has the same Diary in mind as Athenaeus.

²⁴ Berve, *Alexanderreich*, 1. 43, assumes a high degree of clerical organization that is not entirely convincing.

²⁵ There is, however, no real basis on which one can decide what should or should not be in the Diary, how far it is a record of the king's personal life and whether or not Eumenes allowed anyone but the king to see it. Here again Berve is over-dogmatic in his reconstruction (*Alexanderreich* 1. 50—51). For a good discussion see Kaerst, RE s. v. *Ephemerides* (5). 2749—2753, who suggests parallels with the older oriental royal records and the later memoranda of Hellenistic kings; and cf. U. Wilcken, *Ἰπομνηματισμοί*, *Philologus* 53 (1894)

person to be in charge of maintaining such a record (Diodotus of Erythrae is not otherwise known)²⁶. The questions which have to be decided are the following: Where did Arrian, Plutarch, Athenaeus, and Aelian find the text from which they quote? Is it a genuine and accurate, or reasonably accurate, version of the original diary? and if so, how was it preserved and transmitted?

So far as Arrian's quotation is concerned, the possibility must be considered that he found it in Ptolemy or Aristobulus and had no knowledge of the Diary from any other source. Wilcken argued in 1894²⁷ that Ptolemy himself had a copy of the Diary which he was able to consult when writing his history — a genuine copy which he kept in his possession till the end of his life; that he quoted its account of Alexander's last illness, and that Arrian took it from him. The notion that Ptolemy used the Diary is a very convenient hypothesis, because it supplies an additional reason for believing that his history was accurate — and a better reason than those which Arrian gives. Indeed this hypothesis has been so widely accepted that it has acquired the force of a "received opinion;" it is often stated as a fact that "Ptolemy used the Diary²⁸," and attempts have been made to discover further passages in Arrian which are ultimately based on the Diary's documentary record; it has been argued that Ptolemy frequently based his narrative on the reports of commanders which were incorporated in it and that he transferred them into his text, keeping the official style or jargon in which they were written²⁹.

If Ptolemy used the Diary, it has to be shown how he, and no one else, came to possess a copy of it. It could hardly be assumed that numerous copies were made by Alexander's scribes, and the natural tendency was to link the fate of the Diary itself with the fate of Eumenes who was responsible for writing it. Lehmann-Haupt, therefore, thought that Eumenes could have sent one copy to his friend Hieronymus of Cardia and that Hieronymus used it in writing *his* history; and that another copy (the "King's copy?") was kept by Perdiccas and

80—126, who thinks Alexander's diary is the model for the diaries kept by Ptolemaic officials and finds points of resemblance between the text quoted by Plutarch and Arrian and the diary of a strategos in Egypt under Roman rule preserved in a papyrus (for a revised text of this papyrus see Mitteis-Wilcken, *Grundzüge u. Chrestomathie der Papyruskunde*, Historischer Teil, no. 41).

²⁶ Cf. Plut. *Eum.* 1; Arr. *Anab.* 7. 4, 6; Corn. Nep. 18. 1, 4—6.

²⁷ *Philologus* 53 (1894) 117—126.

²⁸ Cf. e. g. Wilcken, *Alexander the Great* (Eng. trans., London, 1932), Preface and 79—80; Berve, *Alexanderreich* 1. 51; 2. 334; Tarn, *Alex.* 1. 13; Schachermeyr, *Alex.* 133.

²⁹ Cf. H. Endres, *Die offiziellen Grundlagen der Alexanderüberlieferung* (Diss. Würzburg, 1913) and Kornemann, *Ptolemaios*; for criticism see the reviews of Kornemann's book by Strasburger, *Gnomon*, 1937, 483—492; Treves, *REA* 39 (1937) 267—271; Walbank, *JHS* 57 (1937) 98—99.

came into Ptolemy's possession when Perdikkas was murdered during his abortive attack on Egypt. Plutarch tells us (*Eum.* 2) that all the papers of Eumenes were burnt when his tent caught fire in India, shortly before the fleet started on its voyage down the Hydaspes; and Robinson thinks that the Diary (the only copy?) was lost in that fire and that only the volumes written subsequently were preserved at all, though the substance of some of the earlier volumes was preserved in the history of Callisthenes³⁰.

These are ingenious explanations; and the hypothesis that Ptolemy used the Diary is both plausible and convenient. It is no more than a hypothesis, however. Even in modern times, when detailed records are kept and can be consulted, a general is expected to have an accurate and tenacious memory, and this is a gift that was all the more necessary for the commanders of ancient times. If the text of Xenophon's *Anabasis* were searched for traces of a "documentary record" in the manner that Arrian's text has been examined by Endres and Kornemann, some very curious conclusions might emerge concerning the paper work done by the "staff officers" of the Ten thousand; but no one has doubted that Xenophon's graphic story is due to his keen memory; and a keen memory rather than a documentary source is an adequate explanation of the quality of Ptolemy's work. Moreover if, as some critics believe³¹, Ptolemy wrote specifically with the object of refuting the romantic fiction that had been offered as history, it is surprising that he should not have mentioned the Diary as a guarantee of his own truthfulness; and if he did mention it, it is very surprising indeed that Arrian, who gives his reasons for trusting Ptolemy, should say nothing about it when it is the strongest reason of all.

Even if Ptolemy did in fact consult and cite the Diary, it does not necessarily follow that Arrian took his quotation from him; and it is difficult to believe that Plutarch, Athenaeus, and Aelian owe their quotations to Ptolemy, whose work was apparently not widely read in Roman imperial times. Since they all refer to the Diary as they would to a familiar and recognized literary work, it is more likely that a Diary (whether authentic or not) had been published.³² An entry in the Suda lexicon mentions an historian, otherwise unknown, called Strattis of Olynthus who (according to the text usually accepted) wrote three works: *On Rivers, Springs, and Lakes*; *On the Death of Alexander*; and *Περὶ τῶν*

³⁰ C. F. Lehmann-Haupt, *Hermes* 36 (1901) 319—320; C. A. Robinson, Jr., *The Epimerides of Alexander's Expedition* (Brown University Studies, 1932) 70—71.

³¹ Cf. e. g. Berve, *Alexanderreich* 2. 333—335; H. Strasburger, *Ptolemaios und Alexander* (Leipzig, 1934).

³² Jacoby (*F. Gr. Hist.* IID 403—406), who believes that Ptolemy used the Diary, is inclined to think that all the quotations, including Arrian's, are taken from an edited version, and that this edition may be the work of man who worked on Alexander's staff. A. Vezin, *Eumenes von Kardia* (Münster, 1907) 33, seems to take it for granted that Eumenes himself prepared the Diary for publication.

Ἀλεξάνδρου Ἐφημερίδων βιβλία πέντε³³. The title of this last work has been taken to mean "Five books on the Diary of Alexander," and the assumption has been made that it was a commentary on a version of the authentic Diary and was published shortly after Alexander's death³⁴. An early date for both text and commentary is thought to be guaranteed by the fact that Strattis is an Olynthian; Olynthus was destroyed in 348 B.C. and no one born after that date could properly be called an Olynthian; and though the Diary might have been edited and given literary refinement for the purposes of publication, it would have to be based on the authentic text, because at such an early date a forgery would readily have been detected.

An entirely different explanation, however, is equally possible. The Greek title could mean not "Five books on the Diary of Alexander" (such an extensive commentary is distinctly surprising) but "Five books of Diaries about the Exploits of Alexander,"³⁵ a fictitious diary of Alexander's exploits in five books. A fictitious diary calls for a faked author's name; and the argument for an early date disappears if we suppose that the author was not really an Olynthian but called himself "Strattis the Olynthian" in order to make it appear that he was a contemporary of Alexander, remembering that two men who wrote about Alexander did in fact come from Olynthus — Callisthenes and Ehippus³⁶. A fake diary of Alexander's expedition, whether seriously intended to deceive readers or not, would undoubtedly make use of existing historical works, including those of Ptolemy and Aristobulus, except when attempting to shock people with "startling new revelations" about the character of Alexander. Remarks about Alexander's drinking and its after-effects are just what one would expect in a faked record; and the account of his last illness could be founded on the reports of Ptolemy and Aristobulus, with a few extra details added, to give the appearance of authenticity; Strattis' work "On the Death of Alexander" could then be an appendix to his "Diary."

Arrian never says that the account in the Diary is identical with that of Ptolemy or Aristobulus; his comment is οὐ πόρρω δὲ τούτων οὔτε Ἀριστοβούλῳ οὔτε Πτολεμαίῳ ἀναγέγραπται. It has been argued that this sentence

³³ Suda s. v. Στράττις, Ὀλύνθιος, ἱστορικός (F. Gr. Hist. IIB no. 118); cf. R. Laqueur, RE s. v. Strattis (2). For variant MS. reading see Ada Adler's edition, Suidae lexicon (Leipzig, 1928—35).

³⁴ Cf. e. g. Droysen, *Gesch. des Hellenismus*, ed. 2, 2, 384; Susemihl, *Gesch. der griech. Lit. in der Alexandrinerzeit* 1. 542, n. 78; Berve, *Alexanderreich* 1. 51; 2. 365; Robinson, H. A. 1. 34.

³⁵ For the word order — Ἐφημερίδων βιβλία πέντε — cf. Suda s. v. Πτολεμαῖος Ἀλεξάνδρεος . . . ὁμηρικῶν ὑποδειγμάτων βιβλία γ' and s. v. Πορφύριος . . . συμμικτῶν ζητημάτων ζ'.

³⁶ For the trick of pretending to come from a city long since destroyed cf. Callisthenes of Sybaris, an obviously faked author cited by [Plut.] *De Fluviiis* 6. Cf. Jacoby, RE s. v. Kallisthenes (3) 10. 1726.

means "no different from this is the account of Aristobulus and Ptolemy;" but it could equally well mean that "nothing beyond this point" or "no detail in addition to these" is recorded by them; the third alternative suits the context best, since Arrian goes on to mention further details recorded by other writers³⁷. If the second or third alternative is what Arrian means, there may be details in the Diary which do not occur in Ptolemy or Aristobulus; and if there are any details which seem incredible or impossible historically, they can be explained as additions of Strattis, not as errors made by Aristobulus or Ptolemy. Furthermore, since Plutarch's version (as was shown above) differs at several points from Arrian's, it can be argued that Arrian, who does not claim to be quoting *verbatim* like Plutarch, sometimes "corrects" the Diary by reference to Aristobulus or Ptolemy.

Now it is well known that the Diary, in both versions, contains one distinct anachronism — a temple of Sarapis existing in Babylon at the time of Alexander's death, though it is hardly possible that the cult of Sarapis was established at all until twenty years later; and even if we ignore the Ptolemaic name Sarapis and imagine the story as told of some Babylonian god, it is still unlikely that the Babylonian priests allowed Macedonians to sleep in the temple, because "dream-oracles" were not a Babylonian institution at all³⁸. Wilcken recognized the difficulty and agreed that the incident could not have been in the authentic diary; but he thought that it was added by Ptolemy — that the cult of Sarapis was established at Alexandria when he wrote his history and that he introduced the story as a form of propaganda for himself and his own national god³⁹. It is hard to see what value as propaganda this imaginary Sarapeum would have, since his readers would easily recognize the historical error; and such crude falsification is quite out of character for Ptolemy⁴⁰. It is much easier to believe

³⁷ The interpretation of the phrase οὐ πέραν τούτων will vary according as one thinks Arrian has taken his quotation from Ptolemy or not. J. Kaerst, *Philologus* 56 (1897) 334—339, who does not think the quotation comes from Ptolemy, prefers "not much different from this" (so also A. Bauer, *Forschungen zur griech. Geschichte*, 297). Wilcken, *Philologus* 53 (1894) 118, prefers "nothing beyond this point" (cf. R. Geier, *Alexandri Magni historiarum scriptores*, Leipzig, 1844, 1), because he does not believe that the account of Aristobulus was similar; while Wachsmuth, *Rh. Mus.* 56 (1901) 220—223, thinks the meaning is "no detail in addition to this" (he agrees with Wilcken that Ptolemy is Arrian's source). For grammatical comment and parallels in other authors see Abicht's note on Arr. *Anab.* 7. 26, 3; note especially Arr. *Anab.* 5. 20, 9; Strabo 15, 1, 35; and Arist. *Pol.* 2. 1262 A.

³⁸ Cf. Isidore Lévy, "Sarapis: la théorie babylonienne," *Rev. de l'hist. des religions* 67 (1913) 308—317, who effectively demolishes the theory that Sarapis was originally a Babylonian god.

³⁹ Wilcken, *Philologus* 53 (1894) 119 and *UPZ* 1. 79—82; Kornemann, *Raccolta Lumbroso*, 241—2.

⁴⁰ Ptolemy's history contained one well-known item of fiction. He said that Alexander on his journey to the oasis of Ammon was guided through the desert by two serpents, not

that it is a "romantic" addition by a later writer, like Alexander's "Prayer to Sarapis", of which we possess a version in a papyrus text of the first century B.C.⁴¹ — a prayer to a god not yet invented. Indeed the imaginary temple of Sarapis is an error which is very difficult to explain except on the hypothesis that the Diary is a fabrication.

In every instance where Plutarch's version differs from Arrian's, Arrian's version is more convincing historically. This is especially true of the king's conference with Nearchus, in which Plutarch says that he listened to reports of Nearchus' voyage while Arrian says that he discussed plans for a new voyage⁴². Plutarch is generally an accurate quoter, and certainly not given to misrepresenting his sources; it is not convincing to argue that Arrian quoted from "a better edition" than Plutarch; on the contrary, the fact that Plutarch's version is the "inferior" one argues that it is the more accurate — provided one agrees that the Diary is not a genuine old document, but a fabrication.

The extant quotations from the Diary, then, can be explained on the assumption that only a fake Diary is involved — a literary production composed in later times and based in part on the work of historians like Ptolemy, Aristobulus, and their contemporaries. It remains to be shown, however, that this assumption is not only convenient but reasonable. The same writers who tell us about the Diary — and other writers besides — show familiarity with other alleged documents, including letters which purport to have been written by or to Alexander himself. If it appears that many or most of these "documents" are fabricated, the case for rejecting the Diary's authenticity will be greatly strengthened; we shall then be more ready to believe that a fake Diary was published than that a copy of the authentic original was preserved.

II. *The Stathmoi*

Strabo, in a passage where he is discussing the credibility of various geographical writers, tries to defend the accuracy of Patrocles, on whom Eratosthenes relied for a number of details, but whose accuracy and integrity have been questioned in both ancient and modern times⁴³. Patrocles was commissioned by two crows as was the more usual account (Arr. Anab. 3. 3, 5); and this preference for serpents is explained as more appropriate to Egyptian tradition (see Jacoby's note on F. 8). This was a miraculous incident in which old Egyptian religion was involved and Ptolemy had to consider the feelings of the faithful; a pious fiction of this sort is very different from an anachronistic temple in Babylon; a miracle is a very different thing from a mere historical absurdity.

⁴¹ A. Vogliano, *Papiri della reg. Univ. di Milano* 1 (1938) no. 21.

⁴² See note 17 above.

⁴³ Strabo 2. 1, 4—7. For discussion of Patrocles see R. Hennig, *Terrae incognitae* 1 (Leiden, 1936) 182—186; J. O. Thomson, *History of Ancient Geography* (Cambridge, 1948) 27—129; Gisinger, *RE s. v. Patrokles* (5).

Antiochus I to explore the Caspian Sea and he is best known for his claim to have discovered the mouth of the Oxus there — a disconcerting discovery if genuine, because the Oxus does not flow into the Caspian now but into the Sea of Aral⁴⁴. Among other reasons for trusting Patrocles Strabo mentions that he claimed to compare the accounts of Alexander's journey given by historians with official records shown to him in Babylon: "He says that the men who took part in the expedition with Alexander⁴⁵ gave only a cursory account of the details, but that Alexander himself maintained strict accuracy, because his staff of experts recorded a description of all the country; and he says that the record was shown to him subsequently by Xenocles, the Curator of the Treasure⁴⁶." This is the only reference in ancient literature to the preservation of Alexander's official records; if they were preserved Babylon was the obvious place for them and the Seleucid kings would have come into possession of them. It has been maintained that Theophrastus subsequently had access, directly or indirectly, to some of these records (the reports compiled by botanists accredited to the expedition) and that they enabled him to correct some of the errors of the historians⁴⁷. But this is pure conjecture; information could have reached Theophrastus through many different channels. This passage in Strabo is the only real evidence that documents were preserved and it relates only to the topographical records. One can only conjecture what other documents were kept in Babylon and what facilities for consulting them were provided under Seleucid rule.

Athenaeus, Aelian, and Pliny the Elder tell us the names of some men who are supposed to have written or to have published topographical records of the expedition — Baeton, Diognetus, Philonides, Amyntas⁴⁸. An important part of topographical documentation was the measuring of distances between places and these men are commonly called *Bematistae* ("Pacers"), from a verb βηματίζειν, which according to Hesychius means "to measure by pacing" and is a Macedonian word⁴⁹. One of these *Bematistae*, Philonides from the Cretan town of

⁴⁴ It is, as Tarn says, "a matter for science" to determine whether or not the Oxus really flowed into the Caspian in ancient times (The Greeks in Bactria and India, 488—493); but many modern historians and geographers believe that it did; cf. M. P. Charlesworth, Trade routes and commerce in the Roman Empire (ed. 2, Cambridge, 1926), 104—7; E. H. Warmington, The Commerce between the Roman Empire and India (Cambridge, 1928), 26—27; Oxford Classical Dict. s. v. Oxus.

⁴⁵ Strabo means "the historians of Alexander." Cf. οἱ περὶ Ἀλέξανδρον in 15. 1, 28.

⁴⁶ Strabo 2. 1, 6 οὐδὲ τοῦτο δὲ ἀπίθανον τοῦ Πατροκλέους, ὅτι φησὶ τοὺς Ἀλεξάνδρῳ συστρατεύσαντας ἐπιδρομάδην ἱστορῆσαι ἕκαστα, αὐτὸν δὲ Ἀλέξανδρον ἀκριβῶσαι, ἀναγραφάντων τὴν ἑλὴν χώραν τῶν ἐμπειροτάτων αὐτῷ. τὴν δ' ἀναγραφὴν αὐτῷ δοθῆναι φησιν ὕστερον ὑπὸ Ξενοκλέους τοῦ γαζοφύλακος.

⁴⁷ H. Bretzl, Botanische Forschungen des Alexanderzuges (Leipzig, 1903) 177.

⁴⁸ For the Testimonia and Fragmenta see F. Gr. Hist. II B nos. 119—122.

⁴⁹ Hesychius s. v. βηματίζειν (cf. Dionysius Chalcous quoted by Ath. 15. 668 F). Strabo uses the word of a Roman road βεβηματισμένη κατὰ μίλιον (7. 7, 4; cf. Polyb. 3. 39, 8). But the word is not known as a technical term in the Roman Empire.

Chersonesus, evidently won a victory of some kind at Olympia and set up a statue of himself there, where Pausanias saw it, and in the inscription, which has been preserved, he called himself not only a *Bematistes* but a *Hemerodromas*⁵⁰ — a “day-runner,” the title given by Herodotus (6. 105) to the famous Philippiades who ran from Athens to Sparta and back. Athenaeus quotes from “Baeton the *bematistes* in his work called *Stages of Alexander's March* (Σταθμοὶ τῆς Ἀλεξάνδρου πορείας); Amyntas called his work “Stages of Asia” and Pliny speaks of Baeton and Diognetus as *itinerum mensores*⁵¹.

It is clear, however, from the quotations that the works which these men published were not merely the original routine reports of distances traversed and measured. They evidently strove to give some literary character to their work, and did not confine themselves to reporting what they had seen with their own eyes. Athenaeus quotes Baeton and Amyntas as saying that “the Tapyri are a people so fond of wine that they never used any other unguent except wine,” and he adds that Ctesias said the same thing⁵². Baeton had something to say about the marvels of more remote India and the Himalayas, which he never visited, and Diognetus is cited by Hyginus for the story of Aphrodite being transformed into a fish when she leapt into the Euphrates to escape from Typho⁵³. Unfamiliar legends, marvels of natural history, strange local customs, whether observed at first hand, reported by native guides, or merely repeated from earlier writers — this is common currency with all the historians of Alexander; its presence in the *Stathmoi* shows that they are not original official reports, but literary works designed to interest and startle readers, not merely to inform them. The question arises, therefore, whether these writers are exactly what they claim to be and whether they are in fact writing with the original documents to refresh their memory. As with the author or authors of the Diary, the suspicion arises that they are borrowing from existing histories of Alexander. Amyntas, for example, described the Persian king's golden vine studded with jewels, which he would have found described in detail by Chares of Mytilene, and the tomb of Sardanapalus at Niniveh with its famous inscription which several of Alexander's historians, including Callisthenes, thought fit to mention; and the tall tales of distant parts of India which Baeton recorded might have been taken from Onesicritus⁵⁴.

⁵⁰ F. Gr. Hist. IIB no. 121, T. 1 — Paus 6. 16, 5; Inscr. v. Olympia 5. 276 (SIG³ 303, Tod, Greek Hist. Inscr. 2, no. 188) βασιλέως Ἀλεξάνδρου ἡμεροδρόμας καὶ βηματιστῆς τῆς Ἀσίας Φιλωνίδης Ζωίτου Κρής Χερσονάσιος ἀνέθηκε Διὶ Ὀλυμπίῳ. Pausanias thinks of Philonides as an athlete, not a literary man [cf. now J. van Bingen, BCH. 78, 1954, p. 408 and the forthcoming study of H. Bengtson in “Symbolae Osloenses” 31, 1955].

⁵¹ Ath. 10. 442 B; 11. 500 D, 12. 529 E; Aelian NA 17. 17; Pliny NH 6. 61 (F. Gr. Hist. IIB nos. 119 & 122).

⁵² Ath. 10. 442 B. For the Tapyri cf. Strabo 11. 9, 1.

⁵³ Pliny NH 6. 69, 7. 11; Hyginus Poet. Ast. 2. 30.

⁵⁴ Baeton (F. Gr. Hist. IIB no. 122) F. 2 — Ath. 12. 529 E — 530 A; Chares (no. 125) F. 2 — Ath. 12. 514 E—F; Callisthenes (no. 124) F. 34 — Photius & Suda s. v. Σαρδαναπά-

None the less, whatever their character may have been as literary works, these *Stathmoi* did offer precise figures for distances covered on the journey, just as Nearchus gave figures in stades for the various stages of his voyage⁵⁵ and as Xenophon had done in his *Anabasis*. There is only one substantial fragment giving figures of this kind, and it is recorded in two versions — by Pliny and by Strabo. The Caspian Gates, Pliny tells us, formed a “key-point” from which distances were reckoned; and from this point the stages to the Jaxartes and to the rivers of India were given separately.

For the stages to the Jaxartes Strabo announces that his source is Eratosthenes, but Pliny refers to the *Bematistae* implicitly if not explicitly⁵⁶. Pliny sometimes counts in Roman miles at the rate of eight stades to the mile, but apart from two mistakes⁵⁷ his figures correspond with Strabo’s and certainly come from the same source, though not necessarily through the same channels.

For the stages from the Caspian Gates to India Pliny’s figures often differ considerably from those of Strabo⁵⁸. Strabo is still following Eratosthenes, but Pliny says outright this time that he is following in the footsteps of Alexander and giving the figures of Diognetus and Baeton. Both Strabo and Pliny are aware of variations in different versions⁵⁹. Neither of them adds up his grand total correctly, and their error can be explained by the difficulty of combining alternate versions just as well as by supposing that their arithmetic is faulty. Strabo tells us elsewhere (15. 2, 8) that the *Stathmoi* gave an alternate route which was about two hundred stades shorter than the route through Drangiane and Arachosia; and he says that Eratosthenes knew a record of stages for the

λαός. For tales of remote India cf. Onesicritus (no. 134) F. 9, 10, 11 — Pliny NH 2. 183—185, 7. 28 with Amyntas (no. 119) F. 4 & 5 — Pliny NH 6. 69, 7. 11. This last is a report of strange creatures in the Himalayas (“abominable snowmen?”): *silvestres homines aversis post crura plantis, eximiae velocitatis, passim cum feris vagantes*.

⁵⁵ Arrian records the figures in his *Indica*; the accuracy of figures for distances covered by sea is of course very doubtful.

⁵⁶ Strabo 11. 8, 9; Pliny NH 6. 44—45. The two versions are given in parallel columns in F. Gr. Hist. IIB no. 119 F. 2.

⁵⁷ He omits the stage from the Caspian Gates to Alexandria in Aria (6400 stades in Strabo); and he completely misunderstands the use of the word “Caspus” for the “mons Caucasus,” which is familiar to Strabo (cf. 11. 2, 15); he thinks the “Caspus” refers to a “gens Caspia” east of the Caspian Gates and that the distance was reckoned back from them to the Cyrus and then forward again to them: *Egressos portis excipit protinus gens Caspia ad litora usque. Laeva montuosa. Ab ea gente retrorsus ad Cyrum amnem produntur CCXXV m. p, ab eodem amne si subeatur ad portas DCC. Hunc enim cardinem Alexandri Magni itinerum fecere*. This version of the text gives a vague third person (*fecere*) as source. The alternative reading *itinerum* instead of *itinerum* should be seriously considered, on the assumption that it is a translation of Στάθμοι: „The Stages of Alexander the Great made this place the keypoint.”

⁵⁸ Strabo 11. 8, 9; Pliny NH 6. 61—62.

⁵⁹ ἑξακοσίους, οἱ δὲ πεντακοσίους (Strabo), in quibusdam exemplaribus diversi numeri reperiuntur (Pliny).

route across India which differed from the figures given by Patrocles⁶⁰. Patrocles claimed to have seen the topographical records in Babylon; but the other record was apparently made at a later date under the Mauryas, because (according to Strabo) it was a record of stages along the royal road across India as far as Pataliputra; the distances overland were carefully measured, but east of Pataliputra the distance by river down to the sea could only be estimated.

Patrocles naturally quoted only such figures from the official records as suited his purpose. But Eratosthenes was not able to consult the official records himself, and he makes it clear that no complete copy of them was published at the time when he wrote; in fact he complains of the difficulty of collecting information from the various authors of *Stathmoi*, whose names are not always known⁶¹.

The conclusion must be, therefore, that none of the published *Stathmoi* contained a complete record of all the mileage covered by Alexander's men; that one writer might sometimes differ from another; that many of these works contained material that could not have been in official records; and that the authors may not always have been *Bematistae* themselves. The striking fact is that no trace of the work of the *Bematistae* can be found in Arrian's narrative, though one would expect him to welcome precise records of mileage such as he found in Xenophon's *Anabasis*; the implication must be that neither Ptolemy nor Aristobulus (nor Callisthenes) made use of such records; useful though they were to later geographers like Eratosthenes, they appear to have been neglected by the historians of Alexander's own generation.

III. The Letters

Just as an official diary was certainly maintained for Alexander, so also it is certain that he wrote and received numerous letters, both official and personal. It would be interesting to know how complete a record of these letters was kept in his headquarters and what happened to the original manuscripts after his death⁶². Some official letters that were written to Greek cities were reproduced on stone and are still extant⁶³; others, like his order for the return of

⁶⁰ Strabo 2, 1, 7—8; 15, 1, 11 (F. Gr. Hist. II B no. 119, F. 6).

⁶¹ Strabo 2, 1, 23 καὶ γὰρ καὶ τὰ διαστήματα ἄ φησιν ἐκ πολλῶν συνάγειν τῶν τοῦς Σταθμοῦς πραγματευσαμένων, <ὧν> τινὰς καὶ ἀνεπιγράφους καλεῖ. <ὧν> was added by Corais. Even so there is a lacuna at the end of the sentence; this is perhaps better avoided by reading διαστήματα <αὐτ> ἢ than by omitting ἄ with Meineke.

⁶² According to Plut. Eum. 2 Alexander sets fire to the tent of Eumenes and then regrets the loss of the documents and tries to find other copies: "He wrote to the satraps and strategoi everywhere telling them to send copies of the destroyed documents and ordered Eumenes to take them all in."

⁶³ E. g. the inscriptions of Chios and Priene, SIG³ 283 and OGIS 1 (Tod, Gr. Hist. Inscr. 2, 192, 185); technically it may not be quite accurate to call formal instructions, like those given to Priene, letters (cf. C. B. Welles, AJA 42 (1938) 258).

exiles to Greek cities, received wide publicity in Greece⁶⁴, so that we can be confident of knowing what he said though not always of the precise form of words he used. Information of this kind is available only for a very small proportion of his correspondence; but various writers of Roman times, including Arrian and Plutarch, refer to letters which he is supposed to have written or received and sometimes appear to be quoting from the actual text of a letter⁶⁵. The same questions arise, therefore, as were asked about the Diary: Do these later writers offer us genuine quotations or not? are they quoting from a published collection of letters or borrowing from earlier writers? and did the first historians of the expedition see copies of actual letters and use them as documentary evidence?

The letters in the Greek Romance of Alexander are clearly fictitious in the form in which they are given⁶⁶; but some of the quotations in other authors also are certainly not genuine. Imaginary letters of famous men were composed either as literary recreation or rhetorical exercise by numerous people in ancient times, and it is normal routine to be sceptical about letters attributed to historical characters⁶⁷, whether they are letters of an established author preserved in a codex along with his more familiar works or preserved in an independent manuscript tradition or simply quoted by some writer of later date; and it is recognized that in any collection genuine letters may be mingled with the spurious. Even when full texts are extant, as with the letters of Plato and Isocrates, it is not always easy to distinguish the genuine from the spurious. When only fragments are available, it is sometimes possible to recognize a spurious letter on the basis of a single short quotation (if, for example, it contains some historical absurdity); but authenticity can never be proved from a short fragment. The mere fact that a letter includes remarks which are attributed to Alexander by reputable historians is no proof that the letter is genuine; indeed, it is an obvious procedure for anyone who is composing fictitious letters to insert such remarks in them and an example is ready to hand from a group of letters which no one would want to defend as genuine. The Socratic letters

⁶⁴ Diod. 18, 8, 4. Cf. also Alexander's request to the Athenians for ships (Plut. Phoc. 21, 1) and his order to the Plataeans to rebuild their city (Plut. Alex. 34; Aristid. 11). Also his letter to Athens demanding surrender of the nationalist leaders (Arr. Anab. 1. 10, 4).

⁶⁵ Cf. e. g. Cic. De Off. 2. 14, 48. Exstant epistulae et Philippi ad Alexandrum et Antipatri ad Cassandrum cf. De Off. 2. 15, 53 for a quotation from a letter of Philip and A. Gell. NA 9, 3; Feruntur adeo libri epistularum eius munditiae et venustatis et prudentiae plenarum, velut sunt illae litterae quibus Aristoteli philosopho natum esse sibi Alexandrum nuntiavit. A quotation from the Greek text follows. For Antipater's letters cf. Suda s. v. Ἀντίπατρος (κατέλιπε ἐπιστολῶν σύγγραμμα ἐν βιβλίοις δυσίν.).

⁶⁶ Merkelbach, Alexanderroman, discusses the origin and history of these letters.

⁶⁷ See Westermann's famous essay De epistularum scriptoribus Graecis commentationis pars I (Leipzig, 1851) and C. Huit, "Les épistolographes grecs," REG 2 (1899) 149—163.

include a short letter from Socrates to Plato in which he finds fault with Crito for urging him to escape from prison⁶⁸; but no one would propose to claim this as a genuine letter simply because the argument corresponds with what Socrates says in Plato's *Crito*.

It is curious that this simple consideration has not always been recognized by critics who have discussed Alexander's correspondence and have been ready to claim a letter as genuine because it contained a remark which might suitably have been made by Alexander⁶⁹. Much trouble has been taken in attempting to sort out the few quotations which could be genuine from those which probably or certainly are not; but the results of such investigation, even if valid, are of little importance when the quotations which *could* be genuine are either insignificant or are already reported by the historians. A few examples, however, may be given of definitely spurious fragments in order to show the different purposes with which letters appear to have been composed. It must be recognized that we are not always dealing with a "forger" in the proper sense of the term — a man who offers to a library or a collector a faked manuscript which purports to be an unknown work by a famous author. The primary object of such a forger is to make his book appear like a genuine antique article. But a writer of fictitious letters in later antiquity is thinking in terms of readers rather than collectors; his object may be to interest them by revealing "new facts which throw new light on great figures of the past;" he may want to refute the judgment of historians or vindicate the judgment of philosophers; and if he can produce "sensational new documents" he can offer new answers to familiar problems.

A number of incidents in Alexander's life were never properly cleared up by the historians; and when we find letters quoted which fill the gaps in our knowledge, we cannot help suspecting that they have been fabricated for this very purpose. In his account of the battle of the Jhelum Arrian shows that Aristobulus and Ptolemy disagreed on several details and in particular about the size of the enemy detachment, under Porus' son, which faced Alexander when he made his crossing of the river upstream from the main body of his army (*Anab.* 5. 14, 3—6). Ptolemy, in fact, argued about the size of this force and considered Aristobulus' figure of sixty chariots too small; his own figure — two thousand horsemen and a hundred and twenty chariots — is only an estimate, but since he crossed the river in the same ship as Alexander (*Anab.* 5. 13, 1) he must have known all that Alexander did. When, therefore, Plutarch quotes a letter of Alexander which combines features from the accounts of Ptolemy and Aristobulus and gives the enemy force as sixty chariots and a thousand horsemen, one has to decide whether it is a genuine letter or a fabrication

⁶⁸ Socr. Ep. 7b (R. Hercher, *Epistolographi Graeci*, 616).

⁶⁹ Cf. E. Pridik, *De Alexandri epistularum commercio* (Berlin 1893) and A. Zumetikos, *De Alexandri Olympiadisque epistularum fontibus et reliquiis* (Berlin, 1894).

which offers a compromise between the conflicting accounts; and the second alternative is much more likely, because the letter shows Alexander in possession of tactical information which Ptolemy lacked and it seems designed to show that he knew what the enemy was doing when the historians clearly believed he did not⁷⁰.

In describing the conspiracy of the pages Ptolemy and Aristobulus agreed that the pages under torture implicated Callisthenes; but Plutarch quotes letters supposed to be written to Craterus, Attalus, and Alcetas in which Alexander says the pages named no accomplices⁷¹. The historians did not know whether Callisthenes was in fact guilty; but they show Alexander having some reason for believing him guilty; the purpose of the letter seems to be to show that Alexander acted *without* reasonable grounds, like the tyrant which some of his critics considered him to be. Again, the disgrace of Callisthenes is supposed (naturally enough) to have produced a distinct coolness towards Aristotle on the part of Alexander; and Chares says that he wanted Aristotle to be present when Callisthenes was brought to trial before the Greek synedrion. Plutarch, however, quotes from a letter written to Antipater in which Alexander says: "I will punish the sophist and those who sent him out" — a definite threat to Aristotle, of which the historians say nothing⁷².

Other quotations from letters contradict the historians, sometimes on quite minor points, and it has even been argued that such letters must be genuine because no forger would think of doing such a thing⁷³. Forgers are not necessarily lacking in ingenuity; but if we think of these letters as deliberately intended to edify or startle readers with new discoveries, and not merely to masquerade as genuine documents, the reason for believing they are genuine disappears; and in general it is a sounder principle to suppose that a letter which contradicts the historians is probably *not* genuine⁷⁴. And it is the same with letters which vindicate the bitterness of the philosophers. The hostility of the philosophic schools towards Alexander is well known⁷⁵; they cherished the

⁷⁰ The point is well argued in detail by A. Bauer, in *Festgaben zu Ehren Max Büdinger's* (Innsbruck, 1898), 71—88, in reply to Schwartz (RE 2. 917) who thought the letter was genuine and one of the actual sources of Aristobulus.

⁷¹ Arr. Anab. 4. 14, 1; Plut. Alex. 55.

⁷² Plut. Alex. 8 & 55 (cf. Kaerst, *Philologus* 51 (1892) 607).

⁷³ Cf. e. g. Pridik, *op. cit.* (see note 69 above) 64—69; both he and Zumetikos (see note 69 above) are prepared to accept as genuine a letter to Antipater in which he orders him to give special privileges in Macedonia to the Macedonian veterans whom he is sending home after the mutiny at Opis (Plut. Alex. 71); Arrian, however, who is almost certainly following Ptolemy, says that Craterus was sent home to look after the resettlement of these men and Antipater ordered to come out to the East with reinforcements (Anab. 7. 12, 4).

⁷⁴ This principle is admirably stated by J. Kaerst, „Der Briefwechsel Alexanders des Gr.," *Philologus* 51 (1892) 602—622.

⁷⁵ Cf. e. g. J. Stroux, „Die stoische Beurteilung Alexanders des Großen," *Philologus* 88 (1933) 222—240.

picture of an orientalized tyrant, corrupted by his good fortune and his flatterers, with a grotesque and impious belief in his own divinity; and they castigated the memory of Callisthenes for his flattery of the king and his invention of miracles which made him appear superhuman. Callisthenes was responsible for inventing the miracle of the Pamphylian coast, telling how the sea, which threatened his men marching along the shore, suddenly withdrew and curtsied before him as though he were lord of the sea itself⁷⁶; and Plutarch (*Alex.* 17) is able to deflate the story by quoting a letter in which Alexander described his journey along this coast "without any such miracle" (οὐδὲν τοιοῦτον τερατεύσμενος). Chares said that Alexander was wounded by Darius himself at the battle of Issus, and many writers, including Onesicritus and Cleitarchus, told the story of his meeting with the queen of the Amazons; to show the folly of such exaggerations it was useful to be able to quote letters in which Alexander made light of the wound he had received at Issus, never mentioning his assailant by name, and never mentioned the Amazons but said the Scythian king (from across the Jaxartes) offered him his daughter in marriage⁷⁷.

There is perhaps nothing intrinsically absurd or impossible in letters like these; but when one comes to letters which are designed to make Alexander himself look ridiculous and not merely to expose his flatterers, no one could be deceived by them. A number of letters between Alexander and his mother are cited by Plutarch and other writers, some of them plausible enough like that in which he refuses to disclose what the oracle of Ammon told him but says he will tell her privately on his return⁷⁸. But in a work called "Orestes, or A Treatise on Insanity" Varro found a letter which began: "Rex Alexander, Iovis Ammonis filius, Olympiadi matri salutem dicit; "and a reply from Olympias complaining that the letter would arouse the anger of Hera, "when you admit that I am the mistress of Zeus"⁷⁹. Apart from the fact that Alexander always called himself son of Philip, apart from the absurdity and misplaced humour of the reply, the letters are condemned by the purpose which they serve; they make Alexander's claim to divinity look ridiculous⁸⁰.

There is no point in carrying the argument any further; a letter which serves a purpose, whether to vindicate Alexander or to ridicule him, or which contradicts the existing historical accounts must be open to suspicion; and even when a quotation is plausible, proof of authenticity is quite impossible. A distinction can be made between quotations offered by different authors; the quotations offered by Arrian, for example, are much more convincing than

⁷⁶ Schol. T & Eustath. ad Hom. II. 13. 26—30 (F. Gr. Hist. IIB no. 124, F. 31).

⁷⁷ Plut. *Alex.* 20 (cf. *De fort. Alex.* 2. 341 C) & 46.

⁷⁸ Plut. *Alex.* 27.

⁷⁹ A. Gell. *NA* 13. 4.

⁸⁰ The Christian fathers knew of another letter which ridiculed Alexander's claim to divinity (Aug. *De Civ. Dei* 8. 5; Min. Felix 21, 3; Cyprian, *De idol. van.* 3).

those offered by Quintus Curtius⁸¹ and this is not at all surprising; Quintus Curtius is quite capable of fabricating letters himself⁸², while Arrian is more likely to have borrowed them from his historical sources. Plutarch, however, quotes from the letters far more frequently than anyone else — on more than thirty occasions; and the frequency of his quotations with his casual reference to "Alexander in his letters" induced earlier critics to believe that he was using a published collection of Alexander's correspondence⁸³. This view seems all the more likely now that two papyrus texts have been discovered containing collections of fictitious letters, including letters to and from Alexander.

The older text, published in the second volume of the Hamburg papyri and edited by Reinhold Merkelbach⁸⁴, is dated as early as the first century B.C. and contains letters from other historical personages besides Alexander. The other text, discovered at Oxyrhynchus, is dated in the second century A.D. and is edited by Dino Pieraccioni in the *Papiri della Società Italiana*⁸⁵. It contains versions of the correspondence between Alexander and Darius, four letters — which correspond roughly to the letters given in Arrian (*Anab.* 2. 14 & 25) only with "romantic" additions which would prevent even the most naive reader from thinking they were authentic documents⁸⁶; and also a letter from a certain Polyeidus, perhaps the Greek poet of that name, who is supposed to have been attached to Darius' court and to have fallen into the hands of the Macedonians at Issus; his letter explains to "his son, Darius" how well Alexander is treating the royal ladies whom he has taken prisoner. Of the three letters from Darius to Alexander which are included in the Hamburg papyrus two appear in very similar form in the Alexander Romance of Pseudo-Calisthenes; a letter from Porus to Alexander also appears there in slightly dif-

⁸¹ Letters cited by Arrian in the *Anabasis* include some that are made known to numbers of people in the Greek world or in the army (e. g. 1. 10, 4; 6. 12, 3), as well as written reports, orders, and messages which would be known to members of his staff and to Ptolemy in particular (cf. 1. 18, 4; 29, 3; 3. 16, 6; 19, 6—8; 4. 29, 4. See also 2. 5, 7; 3. 26, 3; 4. 5, 1; 6. 27, 2. Q. Curt. sometimes describes Alexander's written orders and shows him receiving written messages (3. 13, 2; 6. 4, 8; 6. 20; 9. 10, 19; 10. 1, 20; 2, 3), but refers only twice to specific letters of the king (the references are both in speeches, 6. 9, 18; 8. 1, 25) and to one letter of Olympias (7. 1, 12).

⁸² Tarn is certainly right in holding that Q. Curt. is a fairly independent writer and not closely bound by his sources like Arrian or Diodorus (*Alex.* 2. 100—108).

⁸³ Cf. e. g. Kaerst, *Philologus* 51 (1892) 603—4.

⁸⁴ „Anthologie fingierter Briefe,“ *Griechische Papyri der Hamburger Staats- und Universitätsbibliothek* 2 (1954) 51—74. See also Merkelbach's previous discussion in *Aegyptus* 27 (1947) 144—158.

⁸⁵ PSI 12. 1285.

⁸⁶ In one letter Alexander styles himself "King Alexander, the great god Ammon" and claims to be descended from Zethus and Amphion "who held all the territory as far as I have come" (col. 3, 8—20).

ferent form, and some of the letters in the later papyrus also have details that appear in the Romance⁸⁷.

These papyri are of great interest because of the light which they throw on the early development of the Alexander Romance; and since they do not offer exact correspondence with quotations given elsewhere, the inference must be that various collections or anthologies existed and that no definitive edition of the letters was available, just as there was apparently no complete and definitive publication of the *Stathmoi*⁸⁸.

Letters to and from Alexander were also obvious themes for pupils in schools of rhetoric; an ostrakon has been found with a fragment of a letter from Alexander to the Carthaginians (a student's exercise, evidently) and a papyrus from Oxyrhynchus preserves a fragment of an *epistula suasoria* to Alexander apparently advising him to be severe in his treatment of the Thebans⁸⁹. The situations which rhetorical exercises assume are normally taken from the historians; and fictitious letters may be elaborations of existing letters, whether versions given by the historians or actual authentic documents. Versions of letters in later historians can also be rationalized versions of published fictitious letters, and this is where the distinction has to be made between serious critical writers like Arrian and writers like Quintus Curtius, whose object is certainly to divert rather than to instruct.

The letters quoted by Arrian, all of them quite reasonable and plausible, could well be taken from Ptolemy or Aristobulus, even the correspondence with Darius, since a diplomatic exchange with Darius is logically needed to explain the advance into Mesopotamia. Unlike Plutarch Arrian does not refer to "the letters of Alexander" in terms which imply he is quoting from a published collection; and he does not contrast letters with the accounts given in his usual sources. There is, moreover, one particular letter which Ptolemy is likely to have quoted or reported in full, because it bears directly on his own constitutional position as king of Egypt: Alexander's letter to his governor in Egypt, Cleomenes, ordering him to put up buildings in Egypt in honour of the dead Hephaestion. Arrian is greatly interested in this letter and disapproves strongly of some parts of it, not so much the orders as the generous offer which followed them: "If I find" the letter runs "the temples in Egypt and the *heroa* of Hephaestion worthily built, I will forgive you your previous errors and henceforth, whatever mistakes you make, you shall not suffer any unpleasant consequences from me". Such astonishing indulgence towards a ruler of Egypt, "an evil man who committed many crimes in Egypt", seemed inexcusable to Arrian (*Anab.* 7. 23, 6—8). But the value of such a letter to Ptolemy is obvious — not because

⁸⁷ For details and references see the commentaries of Merkelbach and Pieraccioni, and Merkelbach, *Alexanderroman*.

⁸⁸ Cf. p. 443 above.

⁸⁹ J. G. Milne, *JHS* 28 (1908) 130; *P. Oxy.* 1. 13 (F. Gr. Hist. IIB no. 153, F. 1). Cf. also *P. Oxy.* 2. 216 (F. Gr. Hist. IIB no. 153, F. 8).

it vindicated his execution of Cleomenes⁹⁰, but because it showed Alexander's intention to give wide independence to the ruler of Egypt; the letter was, as it were, the charter of the Ptolemaic dynasty. If it is a fabrication, then, it must be the work of Ptolemy; but Arrian is satisfied that it is a genuine document; if the original text survived, Ptolemy is likely to have kept it in his possession and there is no difficulty this time in explaining how it came into his hands; Alexandria, not Babylon, was the place where this document would be found.

Since the Ptolemaic origin of this letter in Arrian seems certain, it is worth while to notice that Alexander's reply to Darius' first letter, as given by Arrian, contains some turns of phrase that recall the letter to Cleomenes; there is the same hint that courteous obedience will ensure good relations in the future and the same encouragement not to "fear any unpleasant consequences at my hands"⁹¹. The resemblance of this letter to the letter received by Cleomenes is unmistakable; there is a strong case for believing that Arrian's version of the diplomatic exchange with Darius is taken from Ptolemy, whether he is considered author or merely editor of the letters⁹².

IV. *The Will and the Last Plans of Alexander*

It remains to consider briefly the evidence that other documents of a less distinctly literary character were forged or faked in late Hellenistic times.

The Will of Alexander as reproduced at the end of the Romance of Pseudo-Callisthenes (3. 33, 1—25) and in the Latin Metz Epitome⁹³ could never be

⁹⁰ R. Hansen, *Philologus* 39 (1880) 286 thought that Ptolemy had faked the letter to justify his treatment of Cleomenes.

⁹¹ *Anab.* 7. 23, 8 εἰ τέ τι πρότερον ἡμάρτηκας, ἀφήσω σε τούτων, καὶ τὸ λοιπὸν ὁπήλικον ἂν ἀμάρτης, οὐδὲν πείσῃ ἐξ ἐμοῦ ἄχαρι.

2. 14, 8—9 εἰ δὲ φοβῇ μὴ ἐλθὼν πάθῃς τι ἐξ ἐμοῦ ἄχαρι, πέμπε τινὰς τῶν φίλων τὰ πιστὰ ληψομένους. ἐλθὼν δὲ πρὸς με τὴν μητέρα καὶ τὴν γυναῖκα καὶ τοὺς παῖδας καὶ εἰ ἄλλο τι θήλεις αἰτεῖ καὶ λάμβανε. ὅτι γὰρ ἂν πείθῃς ἐμὲ ἔσται σοι, καὶ τοῦ λοιποῦ ὅταν πέμπῃς, παρ' ἐμὲ ὡς βασιλέα τῆς Ἀσίας πέμπε κτλ.

Q. Curt. 4. 1, 14 distorts these sentences by abbreviating them:

Quod si te committere nobis times, dabimus fidem impune venturum. De cetero, cum mihi scribes, memento non solum regi te, sed etiam tuo scribere. The resemblance to Arrian's version is clear despite the distortion (de cetero seems to be a misunderstanding of τοῦ λοιποῦ).

⁹² Arrian's version of the correspondence (*Anab.* 2. 14 & 25) differs in several details from the version in *Diod.* 17. 39 & 54 and *Q. Curt.* 4. 1, 7—14; 5, 1—8). Diodorus has the strange tale of Alexander composing two replies to the first offer of Darius: one for Darius, a different one for his councillors to see.

⁹³ *Incerti auctoris epitome rerum gestarum Alexandri Magni e codice Mettensi*, ed. O. Wagner, *Jhrbb. f. klass. Phil.*, Supp. 26 (1901) 93—167. Sections 87—123 of this text are printed with the text of *Ps. Callisthenes* 3. 31—33 in parallel columns by Merkelbach, *Alexanderroman* 220—251; he is trying to reconstruct the common original text which the two authors appear to have used.

mistaken for a genuine document. It is given in the form of a letter to the Rhodians, and the author may have found it included in a collection of letters, since it is now known that fictitious letters played an important part in the genesis of the Alexander Romance. But a fragment of this same will, with almost identical wording, has been found on a papyrus which dates from the first century B.C.,⁹⁴ and it may originally have been fabricated some time before that. In fact, it may have been in the first place an actual forged document, not a mere literary production. Diodorus (20. 81, 3) says that Alexander deposited his will with the Rhodians because of their importance as a maritime power (from whatever source he may have learnt this curious piece of information); and it seems right, therefore, that the document should include special clauses in favour of the Rhodians: Olympias may settle in Rhodes if she wishes, the islanders are to be free with the Rhodians as their protectors, and so on. If such a document was ever expected to be taken seriously and was produced for some political purpose, it must have been produced at a time when the freedom of the islanders was an important issue and Rhodes was at the height of its power—not much before the middle of the third century B.C. and perhaps in the first quarter of the second century, when Rhodes was trying to retain the good will of the Romans⁹⁵.

Diodorus and a papyrus fragment of the first century cannot persuade us that a genuine will of Alexander was known to any historian, because the whole course of events after Alexander's death assumes the lack of any authentic will. Modern critics, however, have not all been so ready to dismiss as a fiction the story told by Diodorus (18. 4) about certain "papers of Alexander" which Perdiccas is supposed to have found, outlining among other things an elaborate plan for the conquest of Carthage and the whole of the western Mediterranean. Diodorus describes how Craterus was sent off by Alexander in command of the soldiers who were to receive their discharge:

"He had also received written orders, which the king had charged him to carry out, but after the death of Alexander the successors decided not to carry out what he had planned. Perdiccas had found among Alexander's papers (ἐν τοῖς ὑπομνήμασι τοῦ βασιλέως) orders for the completion of Hephaestion's pyre (a task which entailed a large sum of money); he decided it would be best

⁹⁴ Pap. Vindob. 31954, as restored by M. Segre, Riv. di fil. 61 (1933) 225—6 (cf. H. Fuhrmann, Archiv f. Pap. 11 (1933) 107—9). Cf. Ps. Call. 3. 33, 11—12.

⁹⁵ Cf. G. De Sanctis, Riv. di fil. 61 (1933) 226—8 and A. Ausfeld, Rh. Mus. 56 (1901) 517—542. Ausfeld thought the will might have been fabricated in the first instance within a few years after Alexander's death in the interest of the islanders, with the special Rhodian provisions added later. Merkelbach now maintains (Alexanderroman 121—151) that a political pamphlet, "The Last Days of Alexander", was published by the adherents of Perdiccas—a form of publication comparable to the work of Ephippus (F. Gr. Hist. IIB no. 126); and that a later expanded pro-Rhodian version was produced some time after 304, containing the provisions of the will in favour of Rhodes.

not to carry through this scheme or the numerous other ambitious schemes that he found there, projects that would involve enormous expenditure. But in order not to give the impression that he was detracting from Alexander's glory on his own initiative, he presented the plans for these projects to the general Macedonian assembly (ἐπὶ τὸ κοινὸν τῶν Μακεδόνων πλῆθος). The biggest of these plans and the most worthy of mention were the following:

To build a thousand ships of war, larger than triremes, in Phoenicia, Syria, Cilicia, and Cyprus for the campaign against the Carthaginians and the other nations living along the sea coast of Libya, Iberia, and the rest of the coastal area as far as Sicily.

To make a road along the coast of Libya as far as the Pillars of Heracles.

To build six magnificent temples, each costing fifteen hundred talents.

In proportion to the needs of the great armament to build harbours and shipyards at convenient places.

In addition there were to be synoecisms of cities, shiftings of population from Asia to Europe and inversely from Europe to Asia, in order that by intermarriage and family ties he might bring these great continents into a sense of common harmony and friendship based on ties of blood; and the temples previously mentioned were to be built on Delos, at Delphi, and at Dodona, and (in Macedonia) a temple of Zeus at Dium, a temple of the Taurian goddess at Amphipolis, and a temple of Athena at Cynus⁹⁶; there was also to be built a temple of this same goddess at Ilium which would surpass all her other temples; and there was to be a tomb of his father Philip like the largest pyramid in Egypt, which some people reckon among the seven greatest things in the world.

When these plans were read out to them the Macedonians, despite their high regard for Alexander, decided that none of them should be carried through, as they saw that the plans were exaggerated and unpractical''.

There are numerous difficulties in this passage⁹⁷ and it will be best to take it sentence by sentence. It begins with an apparent confusion between the orders given to Craterus and the papers found by Perdicas. Diodorus may be responsible himself for this confusion — perhaps because he is abbreviating his source — but the orders which were given to Craterus to be carried out in Macedonia can have nothing to do with these grandiose plans; Arrian (*Anab.* 7. 12. 4) says he is to resettle the soldiers in their homeland and take over the

⁹⁶ ἐν Κύρῳ is not the correct reading; the easiest change is ἐν Κύρῳ, but it may not be right.

⁹⁷ The case for rejecting this document has been put very strongly by Tarn, *Alex.* 2. 378—398; this discussion supersedes his earlier articles in *JHS* 41 (1921) and 59 (1939).

For the other side see Wilcken, *SB. Akad. Berlin*, 1928, 593, n. 1, and 1937, 191—207. Other German critics have sided with Wilcken, but have not attempted to meet Tarn's arguments, e. g. W. Kolbe, *Die Weltreichsidee Alexanders des Gr.* (Freiburg, 1936) 12; Berve, *Alexanderreich* 1. 52; Schachermeyer, *Alex.* 452—459. Beloch, *Gr. Gesch.* 4. 1, 63, n. 2, agrees with Tarn.

duties of Antipater in Macedonia and Greece, while Antipater is to march to the East with fresh troops; it is needless to suppose that any source supplied a serious alternative to these orders. The "papers" do not represent orders given to anyone, nor are they part of any diary;⁹⁸ they are clearly thought of as notes or draft sketches made in Alexander's own hand. It is, therefore, curious, to say the least of it, that Perdiccas should present the contents of these papers to the Macedonian military assembly, instead of merely suppressing them; his procedure is particularly strange since, as Tarn points out,⁹⁹ it was not usual for the Macedonian assembly to be consulted on matters of policy, but only as regards the royal succession or when charges of treason were to be heard.

Those who believe that these "papers" are genuine pin their faith to the "good source" whom Diodorus followed in most of Books 18, 19, and 20 — Hieronymus of Cardia; Wilcken argued that Eumenes knew of the documents and showed them or described them to Hieronymus and that Hieronymus duly recorded their contents in his history. Even a "good source" cannot command blind faith from us; but it may be doubted whether Diodorus is in fact following Hieronymus here.¹⁰⁰ In any case, whatever the source of Diodorus may be, we must still ask whether his description of the documents is convincing and the same tests must be applied as for the letters attributed to Alexander. Are any details in these plans (1) inconsistent with the facts as recorded by other "good sources," (2) incredible or out of character for Alexander, or (3) such as might have been invented at a later date?

There are good reasons for answering "yes" on all three counts: (1) Hephaestion's pyre was already completed¹⁰¹ and so were four, or perhaps five, of the six "magnificent temples" that were to be built. The temple "at Cynus" is a mystery and the text is probably corrupt; but the new temple at Delphi was in process of building and the other four temples were still standing; Diodorus says distinctly "build," not repair or improve or enlarge, and there can hardly be any question of misunderstanding. (2) The pyramid of Philip is unthinkable, since Philip was a Macedonian king whom Alexander could not possibly orientalize. (3) The whole scheme for a western expedition is described in terms which are not intelligible except in a Roman setting, at a time when Carthage has become a world power such as she was at the opening of the Second Punic War. The enormous expedition, with a thousand warships "larger than triremes," would be quite out of proportion in any expedition against the Carthage of the fourth century, and the idea of a great coast road as part of a scheme of

⁹⁸ As was believed by Endres (*Rh. Mus.* 72 (1917) 442—3), though no one has agreed with him.

⁹⁹ *Alex.* 2. 379.

¹⁰⁰ Tarn thinks that Diodorus here is in a transition between two principal sources; and if we believe that the document is a fabrication we must agree with him.

¹⁰¹ Or so at least Diodorus had said in 17. 115, where he gave the cost as 12,000 talents.

conquest recalls the gradual building of the Roman road to the Spanish provinces. Quintus Curtius describes briefly Alexander's plans for a western expedition; nothing is said about any document, but the king is supposed to be pondering over them when Nearchus meets him in Carmania; and though the plans differ in detail from those given by Diodorus, there are a number of points which can hardly be genuine.¹⁰²

Tarn has argued the matter in greater detail and has concluded that the plans could not have been thought out until at least as late as 180 B. C. The date is significant, because it suggests the same period as that which is likely to have produced the Will of Alexander; and the important conclusion that can be drawn is that documents as well as letters were fabricated or invented in the second century B. C. and some of them came to be taken as genuine by the less careful historians. Arrian (7. 1, 2) is sceptical about any scheme to conquer Carthage and evidently found no mention of it in Ptolemy; he does not choose, therefore, to say anything about these so-called Last Plans which Perdiccas was supposed to have discovered; but he does mention the Diary, because its account of Alexander's death appeared to vindicate Ptolemy's account.

V. Conclusion

The preceding argument may now be summarized as follows.

There is ample evidence that fake documents and non-authentic records were given literary form. Fictitious letters of Alexander are known to have been in circulation in later Hellenistic times; and we may suppose that later authors (but not Arrian), when they quote from letters, are generally quoting from published collections. It appears that several separate collections were current. Nor was there any definitive publication of the *Stathmoi*, as the language of Eratosthenes shows; many details of figures which he gives may be derived ultimately from reports of *Bematistae*, but the published *Stathmoi* show decided literary features, including hearsay reports and tales of distant countries, which could not have been included in these original records. A published

¹⁰² Q. Curt. 10. 1, 17—19 Ipse animo infinita complexus statuerat, omni ad orientem maritima regione perdomita, ex Syria petere Africam, Carthagini infensus, inde Numidiaie solitudinibus peragratis cursum Gadis dirigere (ibi namque columnas Herculis esse fama vulgaverat), Hispanias deinde, quas Hiberiam Graeci a flumine Hiberno vocabant, adire et praetervehi Alpes Italiaeque oram, unde in Epirum brevis cursus est. Igitur Mesopotamiae praetoribus imperavit, materia in Libano monte caesa devectaque ad urbem Syriae Thapsacum septingentarum carinas navium ponere, septiremis omnis esse deducique Babylona; Cypriorum regibus imperatum ut aes stuppamque et vela praeberent.

Septiremes, as Tarn points out, are unheard of until later; and the use of the word "Alpes" is another anachronism. The fleet built on the Euphrates is intended for the Arabian expedition, and has nothing to do with any western scheme, for which it would of course be quite useless.

version of the Diary cannot be proved with such absolute certainty. But the language in which later authors (including Arrian) refer to it — just like the way in which Plutarch quotes “the letters” — is a strong presumption of such a publication; and the mysterious Strattis of Olynthus, known to us only through the Suda, may be held responsible for it; unfortunately there is no evidence of date, unless one believes Strattis was really an Olynthian and published his work about 280 or earlier.

The analogy of the letters and the *Stathmoi* suggests that a published version of the Diary would not be an authentic or accurate copy of the original document written by Eumenes and Diodotus; and the reports of Alexander's drinking and its after-effects, as well as the error about the Sarapeum, make it difficult to believe that the quotations are in fact genuine. Once these considerations are recognized, it is hard to believe that the quotations from the Diary are taken from Ptolemy; Arrian refers to the Diary as an independent source, just as Plutarch, Aelian, and Athenaeus do, and he compares it with what he found in Ptolemy; the historical error about the Sarapeum is included in his quotation; if Ptolemy himself referred to the Diary as to an authentic document, it is very curious indeed that Arrian should not have mentioned it as a reason for trusting in Ptolemy's accuracy; and the character of Ptolemy's narrative can be explained without supposing that he had a copy of the original diary or other documents with which to refresh his memory — the keen memory and the lucid mind of a competent general are quite adequate to explain his command of detail. The conclusion, therefore, must be that Arrian, like the other authors, knows the published version of the Diary but does not quote it so faithfully as Plutarch does, preferring so far as possible to make it tally with Ptolemy's own story. Perhaps only quite small alterations were necessary for the particular passage that he quoted, if the published Diary was based on Ptolemy's account for the closing days of Alexander's life and differed markedly from other more highly coloured accounts.¹⁰³ Wilcken's comparison of the Diary with the diary of a *strategos* in Roman Egypt suggests a source for the form of the published Diary; perhaps it had an Alexandrian origin rather than a Greek one, in which case the author's familiarity with Ptolemy's history would be readily understandable.

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¹⁰³ See note 95 above.

RANDBEMERKUNGEN ZU DEN KOISCHEN ASYLIEURKUNDEN

Auf die Beziehungen zwischen dem italischen Westen und dem griechischen Osten haben die Asylie-Urkunden aus Kos neues Licht geworfen, die im Jahre 1952 von Rudolf Herzog und Günther Klaffenbach veröffentlicht worden sind.¹ Die wichtigen koischen Inschriften, die den Grabungen Herzogs und zum Teil auch den Funden italienischer Forscher zu verdanken sind, bedeuten nicht nur einen sehr wesentlichen Beitrag zur Geschichte der Insel Kos und ihres Heiligtums, sie geben darüber hinaus wichtige Hinweise auf die weitreichenden Beziehungen, über die das koische Asklepieion verfügte. Unter den Herrschern und Gemeinden, die die Asylie des Heiligtums öffentlich anerkannten und von denen Urkunden auf Kos gefunden worden sind, erscheinen der 2. und der 3. Ptolemäer, Seleukos II. (?), Ziaelas von Bithynien², Städte der Peloponnesos, unter ihnen auch Sparta, makedonische Kommunen (Kassandreia, Amphipolis, Philippi, Pella), einige Städte der kleinasiatischen Westküste wie Kios und Iasos, sowie schließlich — und das war eine gewisse Überraschung — auch Griechenstädte Unteritaliens und Siziliens: Neapolis, Elea, Kamarina und die Geloer in Phintias. Da wir imstande sind, die Asyliedekrete der Städte genau zu datieren, — sie fallen ins Jahr 242 v. Chr. — so stellen die Urkunden eine sehr erwünschte Vermehrung der Quellen für die immer noch sehr dunkle Geschichte des Hellenismus in der Mitte des 3. Jh. v. Chr. dar.

Allein schon die Tatsache, daß eine koische Festgesandtschaft i. J. 242 nach Süditalien und Sizilien reisen konnte, um die dortigen Griechenstädte zu dem großen penteterischen Fest der Asklepieia i. J. 241 nach Kos einzuladen, ist außerordentlich bemerkenswert. Im Jahre 242 kämpften Römer und Karthager noch um Sizilien. Freilich hatte sich das Gewitter nach der Westecke der großen Insel verzogen, es ging jetzt um die letzten Positionen der Karthager auf der Insel, um Lilybäum, Drepanum und um den Berg Eryx, der immer noch von den Puniern unter Hamilkar Barkas gehalten wurde, auch die Küsten Unteritaliens waren vor den Streifzügen der karthagischen Flotte nicht sicher. Sizilien hatte im Jahre 242 mehr als 2 Dezennien Krieg erlebt, der alte Wohlstand der Insel war vernichtet. Kamarina war i. J. 258 nach einem Abfall von den Römern wieder eingenommen, seine Einwohner waren in die Sklaverei ver-

¹ R. Herzog und G. Klaffenbach, *Asylieurkunden aus Kos*. Abh. Berl. Akad., Jahrg. 1952, 1. — Rud. Herzog ist inzwischen am 11. März 1953 im hohen Alter von 81 Jahren gestorben; vgl. den Nachruf H. Berves, *Jahrb. der Bayer. Akad. d. Wiss.* 1953 (München 1954) S. 165 ff. — Die Wissenschaft schuldet G. Klaffenbach um so größeren Dank, als R. Herzog infolge seiner Krankheit zur Herausgabe der Urkunden, die sich teilweise seit vielen Jahren in seinem Besitz befunden hatten, nicht mehr imstande war. — Zu den Urkunden siehe die wichtigen Beiträge von J. u. L. Robert, *Rev. Ét. Gr.* 1953, *Bull. épigr.* Nr. 152.

² Diese vier schon früher veröffentlichten Urkunden am besten bei C. B. Welles, *Royal Correspondence* Nr. 21, 22, 25 u. 27.

kauft worden. Wir sind überrascht, aus dem Asyliedekret zu erfahren, daß die Polis Kamarina im Jahre 242 wieder existiert, wenn sie auch erklärlicherweise den koischen Theoren keine Geschenke an Geld und Geldeswert zu bieten vermag wie die benachbarten offenbar glücklicheren Geloer in Phintias. Gela war zwar auch vor 40 Jahren (durch die Mamertiner) zerstört worden, aber der Tyrann Phintias hatte die Bürger der Stadt, wohl i. J. 281 oder 280, in der nach seinem Namen benannten Gründung wieder angesiedelt.

Das Dekret der Stadt Neapel begründet die Anerkennung der koischen Asylie mit der Freundschaft (οἰκειότης) und mit dem Wohlwollen, das die Gemeinde Kos den Neapoliten entgegenbringe. Die Dekrete der beiden sizilischen Gemeinden sprechen deutlicher von der Verbundenheit in den von den Vätern ererbten Opfern, „die wir von ihnen (d. h. den Koern) übernommen haben“. Im Dekret von Kamarina heißen die Koer geradezu die „Mitbegründer“ (συνοικισταί) der Stadt (Z. 9), während im Dekret der Geloer dieser Ausdruck mit Sicherheit zu ergänzen ist (Z. 7). Wie schon Herzog erkannt hat, bezieht sich dies auf die Neubesiedlung Gelas und Kamarinas durch Timoleon unter Mithilfe des Koers (nicht Keers) Gorgos (Plut. Timol. 35). Bei den beiden sizilischen Gemeinden sind also gewisse Verbindungen mit Kos vorhanden, es sind Bande der Pietät, die die Tochterstädte mit der Mutterstadt verbinden.

Neapel und Elea sind römische *foederati*, sie haben beide nach Kräften die Römer in ihrem Kampfe gegen die Karthager unterstützt. So erfahren wir aus Polybios (I 20, 14)¹, daß die Städte Tarent, Lokroi, Elea und Neapel den Römern die für den Übergang nach Messana notwendigen Schiffe zur Verfügung gestellt haben. Auch in der Flotte, die C. Livius i. J. 191 in die griechischen Gewässer führte, dürften sich Schiffe aus Neapel befunden haben. Ganz besonders eng waren Neapel und Elea (Velia) auf religiösem Gebiet mit Rom verbunden. Noch in Ciceros Zeit wählte man die Priesterinnen der Ceres in Rom aus den Frauen von Neapel und Velia (Cic. Pro Balb. 24, 55). Aus der Zeit nach dem römischen Bundesgenossenkriege besitzen wir Ciceros Hinweis, daß sowohl in Herakleia wie in Neapel Neigung bestanden habe, das angebotene römische Bürgerrecht abzulehnen und sich mit dem bisherigen Status als *civitates foederatae* zu begnügen (Pro Balb. 8, 21). Das Dekret zeigt Neapel als eine völlig souveräne Gemeinde. Man mag einwenden, daß dieses Asyliedekret von geringer politischer Bedeutung gewesen sein dürfte — die Tatsache als solche bleibt bestehen und sie bedeutet nicht mehr und nicht weniger, als daß Gemeinden wie Neapel und Elea (Velia), römische *foederati*, zu einer Zeit in Verbindung mit dem griechischen Osten getreten sind, in der auf Sizilien der Endkampf zwischen Rom und Karthago tobte. Es scheint mir schwerlich denkbar, daß dies ohne Mitwissen der Römer geschehen sein kann. Auch Rom verfügte ja über Beziehungen zu Kos, zwar nicht über direkte, sondern über in-

¹ Vgl. dazu neuestens F. Sartori, Problemi di storia costituzionale italiota, Roma 1953, S. 42 ff.

direkte, durch den Heilgott Asklepios von Epidauros, dessen heilige Schlange i. J. 293 nach Rom überführt worden war und die dort auf der Tiberinsel ihr neues Heiligtum gefunden hatte. Epidauros aber war die sagenhafte Mutterstadt von Kos und das koische Asklepieion eins der zahlreichen epidaurischen Filialheiligtümer in der griechischen Welt. Es wird schwerlich ein Zufall sein, wenn der Architheoros der Koer, den man in den griechischen Westen sandte, den Individualnamen Epidauros führte.

Interessant ist übrigens auch das Erscheinen des Begriffes ἡ σύγκλητος zur Bezeichnung der βουλή von Neapel. Gewiß, ἡ σύγκλητος kommt in dieser Bedeutung auch sonst gelegentlich vor, auf Akragas und Melite hat G. Klaffenbach bereits verwiesen (S. 21)¹. Schon Mommsen (R. St. R. III, 2, 841) hat die Vermutung ausgesprochen, daß die Römer diese griechische Bezeichnung für ihren Senat „ohne Zweifel“ den Campanern entlehnt hätten. Zu dem von Mommsen angeführten Dokument (CIG 5799 = IG XIV 756a) kommt jetzt die koische Urkunde hinzu. Mit Zuversicht können wir nun sagen, daß Rom diesen Ausdruck zur Bezeichnung des Senats in griechischen Dokumenten von Neapel übernommen hat — dies wiederum ein Beispiel für die kulturelle Berührung des Römertums und des unteritalischen Griechentums. Fragt man nach dem Zeitpunkt, so wird man geneigt sein, diesen nicht zu spät anzusetzen: sobald Rom in Berührung mit den Griechenstädten Unteritaliens getreten ist, wurde es notwendig, die römischen Institutionen durch griechische Äquivalente den Hellenen verständlich zu machen. Was den Begriff ἡ σύγκλητος betrifft, so wird man wohl noch in das 4. Jahrh. v. Chr. hinaufgehen dürfen (Vertrag zwischen Rom und Neapel, 326 v. Chr.).²

Noch weniger als die *civitates foederatae* Neapel und Elea können die sizilischen Gemeinden Kamarina und die Geloer in Phintias ohne Einverständnis mit den Römern ihre Asyldekrete zugunsten des koischen Asklepieion erlassen haben. Sizilien war Operationsgebiet und unterstand dem römischen Kriebsrecht. Eine ausdrückliche Erlaubnis der Römer muß unbedingt angenommen werden. Hatte Rom damals ein Interesse an einer Verbindung italischer und sizilischer Griechenstädte mit Kos? Man wird die Frage, glaube ich, bejahen können. Erstens war Kos mit seinem hochangesehenen Asklepieion ein Platz, der — ähnlich wie Delos und Rhodos — zu den Mittelpunkt der griechischen Welt gerechnet werden mußte. Wenn in den Dekreten von Kamarina und Phintias die Rede davon ist, daß diese Städte zur Feier der penteterischen Asklepieia i. J. 241 v. Chr. offiziell eingeladen wurden,

¹ Hinzuzufügen wäre z. B. noch Kroton (Diod. XII 9, 4), vgl. Sartori a. a. O. S. 116; 136.

² M. Holleaux, Στρατηγὸς ὕπατος. Étude sur la traduction en grec du titre consulaire (Bibl. des Écoles franc., 113, Paris 1918), S. 130, glaubt, daß das griech. Äquivalent für röm. *consul* wahrscheinlich erst im 3. Jahrh. zur Anwendung gekommen sei. Ich glaube, dieser Zeitpunkt ist zu spät.

so wird man daraus schließen dürfen, daß die beiden Gemeinden sich aus Gründen der Pietät auch für verpflichtet gehalten haben, dieses große Fest nach Möglichkeit zu beschicken. Ob es dazu gekommen ist, entzieht sich unserer Kenntnis. In Makedonien sind die koischen Theoroi im Spätsommer 242 erschienen (Klaffenbach S. 17), 8 Monate vor dem Fest der Asklepieia (vgl. das Dekret von Kassandreia, Nr. 6, Z. 17), d. h. also etwa April/Mai 241. Allerspätestens im Herbst 242 müssen die koischen Festgesandten in Unteritalien und Sizilien eingetroffen sein. Die Entscheidungsschlacht bei den Ägatischen Inseln fand im Frühjahr 241 statt, nach Eutrop (= Liv.) II 27, 2 am 10. März (nach dem unrevidierten röm. Kalender), nach Beloch (Gr. Gesch. IV 2, 262) etwa Mitte Mai 241, was wohl annähernd das Richtige treffen wird.¹

Wer zu diesem Zeitpunkt, im Herbst 242, als die Dinge unmittelbar vor der Entscheidung standen, in Unteritalien und in Sizilien reiste, der mußte über eine ganze Fülle von Informationen verfügen, die gerade auch dem griechischen Osten von großer Wichtigkeit sein mußten. An Hand der Urkunden stellen wir fest, daß die Festgesandtschaft, die Unteritalien (Neapel und Elea) bereiste, aus drei Männern, Epidaurios, Philophron und Simias, bestand. Die beiden letzten sind nicht mit nach Sizilien weitergereist, denn in den Dekreten von Kamarina und Phintias erscheinen sie nicht, sondern ein neuer Name, Sosistratos. Liegt die Vermutung nicht nahe, daß Philophron und Simias aus Unteritalien schleunigst wieder nach Hause zurückgekehrt sind, um die in Italien erworbenen Informationen an den Mann zu bringen? Für den griechischen Osten, auch für Kos, war es keineswegs einerlei, ob der künftige Sieger in dem großen Kriege Rom oder Karthago heißen würde. Gerade die Nachrichten über den großen römischen Flottenbau in jenen Tagen mußten für die Griechen sehr wertvoll sein.

Wenn man die politischen Aspekte beachtet, die sich bei dieser Betrachtung der koischen Festgesandtschaft im Westen ergeben, verlangt die Frage, in wessen Machtbereich sich Kos um diese Zeit befunden hat, eine Antwort. Als Herren kommen a priori nur zwei hellenistische Herrscher, Antigonos Gonatas und Ptolemaios III. Euergetes, in Betracht. Es sei vorausgeschickt, daß sich diese Frage auf Grund der von Klaffenbach veröffentlichten Urkunden allein nicht entscheiden läßt. Denn neben einer Anzahl von Dekreten makedonischer Gemeinden stehen auch solche von Städten unter ptolemäischer Oberhoheit (Maroneia und sehr wahrscheinlich auch Ainos an der thrakischen Küste).

In seinen „Beiträgen zur Seleukidengeschichte des 3. Jahrh. v. Chr.“ (Abhdl. Bayer. Akad., philos.-philolog. u. hist. Kl. 34, 1; 1928) hat Walter Otto die Behauptung vertreten, daß zahlreiche Indizien auf einen Aufstieg der makedonischen Herrschaft in der Ägäis nach 245 v. Chr. hinzuweisen scheinen

¹ Die Verschiebung der Schlacht in das Jahr 242 (De Sanctis u. a.) kann ich nicht für begründet halten.

(S. 73). Otto spricht sogar von einer deutlichen Erschütterung der ägyptischen Vorherrschaft zur See, was nach Otto auf die für Makedonien siegreiche Seeschlacht bei Andros zurückzuführen sei. Diese Seeschlacht bleibt aber leider problematisch¹, und daß die Ptolemäerherrschaft an der thrakischen Küste um 242 nicht erschüttert war, zeigt nun das Dekret von Maroneia. Für Kos kommt die Inschrift bei Welles, *Royal correspondence in the Hellenistic period* (1933) Nr. 27 in Betracht. Es handelt sich hier (mit großer Wahrscheinlichkeit) um einen Brief des 3. Ptolemäers aus der Zeit um 240, betreffend die Asylie des koischen Asklepieions. Die Erwähnung von „Untergebenen“, denen vom Herrscher die Beachtung der Asylie eingeschärft wird², zeigt, daß Kos mit seinem Heiligtum sich auch damals noch im Bereich der Ptolemäerherrschaft befunden haben muß. Man wird in Kos so etwas wie eine *civitas socia Ptolemaei* sehen müssen.

Dieses Ergebnis ist von einiger Bedeutung, wenn man sich der freundschaftlichen Beziehungen erinnert, die zwischen Rom und dem Ptolemäerreich bestanden und die sich bereits i. J. 273 in einer Art Handelsvertrag niedergeschlagen haben.³ Bekannt ist ferner, daß Ptolemaios II. in dem 1. Punischen Kriege eine streng neutrale Haltung eingenommen hat. Er war angeblich mit beiden kriegführenden Parteien befreundet (App. Sik. 1). Natürlich haben gerade die Ptolemäer die Vorgänge im Westen, vor allem auch auf Sizilien, mit größter Aufmerksamkeit verfolgt. Die Entsendung koischer Theoren befand sich daher durchaus in Übereinstimmung mit den Interessen der Ptolemäer.

Zu den Herrschern, die die Asylie des koischen Asklepieions anerkannten, gehörten auch die Seleukiden; wahrscheinlich ist die Urkunde bei Welles, *Royal correspondence* Nr. 26, ein Brief des Königs Seleukos II., wie dies schon Herzog angenommen hatte. Wie stand es nun mit den Beziehungen Roms zum Seleukidenreich um die Mitte des 3. Jahrhunderts v. Chr.? Bei Sueton, *Vita Claudii* 25, 3 lesen wir: *Iliensibus quasi Romanae gentis auctoribus, tributa in perpetuum remisit* (sc. Claudius), *recitata vetere epistula Graeca senatus populi que Romani Seleuco regi amicitiam et societatem demum pollicentis, si consanguineos suos Ilienses ab omni onere immunes praestitisset*. — Dieser Angabe gegenüber schwankt die Forschung zwischen Glauben (z. B. Beloch) und Unglauben (Holleaux u. a.). Nach Sueton hätte der König Seleucus die Römer um die Aufnahme in die Zahl der *amici populi Romani* gebeten, der Senat hätte der Bitte zugestimmt, jedoch unter der Voraussetzung, daß der König den Iliensern die Immunität verleihe. — Die Argumente, die seinerzeit Maurice Holleaux

¹ Siehe zuletzt etwa A. Momigliano u. P. M. Fraser, *Cl. Quart.* 1950, S. 107 ff.

² Welles, *Royal Corresp.* Nr. 27 Z. 9 ff.: καὶ τοῖς ὑφ' ἡμᾶς τασσομένοις παραδώσομεν ἄσυλον ἡγεῖσθαι τὸ ἱερὸν, ὡς τοὺς ὄρους τεδείχατε.

³ Die Quellen und die ältere Literatur bei M. Holleaux, *Rome, la Grèce et les monarchies hellénistiques*, Paris 1920, S. 60 ff.

gegen die Geschichtlichkeit dieser Notiz vorgebracht hat¹, sind, wenigstens für mich, so schwerwiegend und so überzeugend, insbesondere die Tatsache, daß diese angebliche „Freundschaft“ in den Verhandlungen zwischen den Römern und Antiochos III. nie eine Rolle spielt, daß sich nach meiner Ansicht die Suetonangabe in dieser Form nicht aufrecht erhalten läßt: es kann niemals eine „Freundschaft“ zwischen Rom und einem Seleukiden (Seleukos II. oder Seleukos III.) vor der Zeit des Antiochos III. gegeben haben. Wie ist aber die Legende entstanden? Wir wissen, nicht zuletzt durch neuere Forschungen², daß die Sage von der troischen Abstammung der Römer schon sehr früh ausgebildet worden ist, im 3. Jahrh. v. Chr. war sie jedenfalls allgemein bekannt. Es nimmt nicht wunder, wenn sich spätere Historiker bemühten, auch möglichst frühe politische Beziehungen zwischen Rom und Ilion zu konstruieren. Ein Widerhall dieser Bestrebungen ist z. B. das Instrument des Friedens von Phoinike (205 v. Chr.), wo die Ilienser unter die *adscripti* eingeschmuggelt sind.³

Die Sueton-Angabe gehört in die gleiche Kategorie. Wenn wirklich eine *vetus epistula Graeca* zur Zeit des Kaisers Claudius vorhanden war, so war sie gefälscht. Verständlich wird die Notiz, wenn man sich etwa der gewaltigen Wirkung der Äneis Vergils erinnert.

Es kann demnach als gesichert gelten, daß von den großen hellenistischen Mächten um die Mitte des 3. Jahrhunderts v. Chr. allein die Ptolemäer, gestützt auf ihre weitreichenden Handelsverbindungen, in freundschaftlicher Verbindung mit Rom gestanden haben, anders als die Seleukiden und auch anders als die Antigoniden in Makedonien. Dieses Ergebnis entspricht in diesem Punkt etwa dem Resultat, zu dem vor mehr als 30 Jahren Holleaux gelangt ist. Das Neue aber scheint mir nun die Feststellung zu sein, daß Rom in seinen zahlreichen griechischen *foederati* in Unteritalien und — seit dem 1. Punischen Kriege — auch in den Griechengemeinden Siziliens über sehr wichtige Vermittler mit der Welt des östlichen Griechentums verfügte. Es kann als wahrscheinlich gelten, daß Rom die Politik der *foederati* zwar nicht in allen Einzelheiten gelenkt, aber doch zum mindesten in allen wesentlichen Fällen ausdrücklich gebilligt hat. Dabei wird des öfteren das Pietätsverhältnis zwischen Tochter- und Mutterstadt (wie im Falle von Kamarina und von Phintias) den erwünschten Anknüpfungspunkt abgegeben haben. Dies gilt letzten Endes auch

¹ Holleaux, Rome, la Grèce et les monarchies hell. S. 46 ff. — Nach Aussage der Münzen hat von den Seleukiden in Ilion nur Antiochos II. geprägt; vgl. E. T. Newell, Western Seleucid Mints, New York 1941. Auch das spricht nicht für Sueton.

² J. Perret, Les origines de la légende troyenne de Rome (1942), dazu E. Bickerman, Class. Weekly 1943, S. 93 ff. (vgl. auch Bickerman, Origines gentium, Class. Phil. 47, 1952, S. 65 ff.); F. Bömer, Rom und Troia, Baden-Baden 1951 (vgl. K. Gross, diese Zeitschr. II, S. 359 ff.).

³ K. E. Petzold, Die Eröffnung des 2. röm.-makedon. Krieges (Neue Deutsche Forschungen, 286), Berlin 1940, S. 111 ff.

für die Verbindung zwischen Rom und Ilion, die wir aber, was die angebliche Freundschaft zwischen Rom und dem Könige Seleukos betrifft, in das Reich der Legende verweisen müssen¹.

Es sei mir gestattet, an dieser Stelle eine persönliche Bemerkung einzuschalten: als ich vor 10 Jahren den 2. Band meiner „Strategie in der hellenistischen Zeit“ druckte, hatte mir Rud. Herzog, der nunmehr verewigte Ausgräber von Kos, einige Auskünfte über die dort gefundenen Dekrete makedonischer Städte gegeben (s. Strategie II, 1944, S. 401—402). Es hat sich jedoch als mißlich erwiesen, daß ich damals die vollständigen Inschriften nicht zu Gesicht bekommen konnte. Ich ergreife nun, da die Dokumente publici iuris gemacht worden sind, gern die Gelegenheit, noch einmal in aller Kürze auf die in der Strategie angeschnittenen Fragen zurückzukommen.

Die Dekrete der 4 makedonischen Kommunen, Kassandreia, Amphipolis, Philippi und Pella² zerfallen staatsrechtlich in 2 Gruppen, in die von Kassandreia und Philippi (Gruppe I) und in die von Amphipolis und Pella (Gruppe II). Zwar erwähnen alle Dekrete den König, aber nur die Gruppe I auch die betr. Polis: ἦν (sc. εὐνοϊαν) ἔχουσα διατελεῖ (sc. ἡ πόλις ἡ τῶν Κώϊων) πρὸς τὸμ βασιλέα Ἀντίγονον καὶ τὴν Κασσανδρέων πόλιν καὶ πρὸς τοὺς λοιποὺς Μακεδόνας πάντας bzw. πρὸς τὸμ βασιλέα Ἀντίγονον καὶ τὴν πόλιν τὴν Φιλίππων καὶ πρὸς τοὺς ἄλλους Ἕλληνας καὶ Μακεδόνας. Gruppe II verzeichnet an dieser Stelle dagegen nur: πρὸς τὸν βασιλέα Ἀντίγονον καὶ πρὸς Μακεδόνας. Dazu ein weiterer Unterschied: in den Dekreten der Gruppe I heißt es, das Heiligtum des Asklepios in Kos solle unverletzlich sein κατὰ τὴν τοῦ βασιλέως βούλῃσιν (Kassandreia) bzw. καθάτερ καὶ ὁ βασιλεὺς Ἀ. προαιρεῖται (Philippi). In den Dekreten von Gruppe II findet sich zu dieser Wendung kein Gegenstück. Schließlich wird in den Dekreten von Gruppe I als beschließende Körperschaft die βουλὴ (Kassandreia) bzw. die ἐκκλησία [sic!] (Philippi) genannt, in Gruppe II findet sich an dieser Stelle nur die Erwähnung der Polis. — Der Unterschied ist kein Zufall. Durchmustert man die Herkunftsangaben der Makedonen in hellenistischer Zeit, so fällt auf, daß die Einwohner gewisser Städte sich offiziell Μακεδόνες ἐξ Ἀμφιπόλεως nennen, die Einwohner Kassandreias dagegen heißen immer nur Κασσανδρεῖς und für die Einwohner von Philippi ist der Begriff Φιλίππεις belegt. Schon vor vielen Jahren hat Walther Kolbe (GGA 1916, 434) aus dieser Beobachtung den Schluß gezogen, daß die Bewohner Kassandreias in staatsrechtlichem Sinne keine Makedonen gewesen seien; man müsse zwei Kategorien von Poleis unterscheiden, solche die unmittelbar zum makedonischen Staate gehören (wie Thessalonike und Amphipolis) und solche, die in einem Bundesverhältnis zu ihm gestanden haben. Was Kassandreia betrifft, so nimmt Kolbe (a. a. O. S. 435, 1) an, daß

¹ Auch die Gründe, die neuerdings Balsdon, JRS 44 (1954) S. 32—33, zu Gunsten der Echtheit des Briefes vorbringt, sind m. E. nicht überzeugend.

² Herzog u. Klaffenbach Nr. 6 u. 7.

diese Stadt nach ihrer Einnahme durch Ameinias (Polyaen. IV 6, 18) i. J. 276 sehr milde Bedingungen von Antigonos Gonatas erhalten habe.

Wie steht's mit Philippi? Die Stadt ist eine Gründung Philipps II., und zwar, wie wir nun mit Zuversicht sagen dürfen, eine Gründung nach griechischem Muster, sicherlich unter Heranziehung griechischer Siedler. Und mit dem Griechentum fühlte sich diese Stadt, wie die Nennung der Hellenen in ihrem Dekret zeigt, immer noch aufs engste verbunden. Philippi hielt sich im übrigen eigene Söldner (*ξένοι στρατιῶται οἱ παρὰ τῇ πόλει μισθοφοροῦντες*), über die die Strategen das Kommando führten. Die Strategen waren wohl städtische Funktionäre.¹ Bemerkenswert ist auch das Erscheinen eines Archon und eines Prytaneion in der Stadt; es hat demnach den Anschein, als ob die Stadtverfassung nach griechischem, vielleicht sogar nach attischem Vorbilde geschaffen worden wäre, kein Wunder übrigens, wenn man sich der Niederlassung der Athener in Daton, in der Nähe des späteren Philippi, erinnert.

Die besondere Stellung der Poleis der Gruppe I beleuchten die unscheinbaren Wendungen, daß das Asklepieion Asylie genießen solle „nach dem Willen des Königs Antigonos“ (Kassandreia) bzw. „wie es der König Antigonos wünscht“ (Philippi). Man wird daraus entnehmen müssen, daß der Beschlußfassung über die koische Asylie in der Bulé bzw. in der Ekklesie eine Anfrage an den König seitens der Städte vorausgegangen ist. Der König hat daraufhin den Poleis die Erlaubnis erteilt — auch dies ein Beispiel für die prekäre Autonomie der Städte Kassandreia und Philippi im Antigonidenreich. Gewiß sind formale Unterschiede zwischen den beiden Kategorien von Poleis unverkennbar, aber ebenso gewiß sind auch die Städte der ersten Gruppe von den Befehlen des Königs abhängig.

Über die Verfassung der eigentlichen makedonischen Kommunen (Amphipolis, Pella) erfahren wir leider so gut wie nichts.² Da ihre Dekrete keine Bulé und keine Ekklesie nennen, so wird man mit aller gebotenen Vorsicht vermuten dürfen, daß diese Institutionen hier nicht vorhanden waren: maßgebend wird, wie im übrigen Makedonien, die Wehrgemeinde gewesen sein.

Würzburg

HERMANN BENGTON

¹ Meine Vermutung, die Strategen seien, ebenso wie der Archon, in Philippi königl. Beauftragte gewesen (Strategie II S. 400), ziehe ich nach Kenntnis der gesamten Urkunde zurück. Klaffenbachs Einspruch (S. 17) ist sehr berechtigt.

² Zu Thessalonike, das in diese Kategorie gehört, s. meine Bemerkungen DLZ 1939, 565 f.

IMPERIAL AND SENATORIAL JURISDICTION IN THE EARLY PRINCIPATE*

Under Augustus, or at any rate in the Julio-Claudian period, several forms of jurisdiction affecting Roman citizens came into existence, or into prominence, which either did not exist or were rarely to our knowledge exercised under the late Republic. Appeals (*appellationes*) to the emperor against civil judgments from both Italy and the provinces were already common under Augustus, and similar appeals to the senate are recorded under Nero. Augustus also occasionally exercised a primary civil jurisdiction, and so apparently did the consuls in his day. In capital cases both the emperor and the senate exercised a primary jurisdiction against which there was, it would seem, no *provocatio ad populum*: these jurisdictions are well attested under Tiberius and can be traced back to Augustus' reign. Finally in some capital cases the accused was entitled to appeal to the emperor; this right apparently replaced the ancient *provocatio ad populum*. The only attested case in the Julio-Claudian period is the appeal of Paul of Tarsus to Nero.

Civil Appeals in the Late Republic

The judicial *appellatio* of the Principate was, as its name implies, derived from the Republican practice, whereby a citizen could appeal to (*appellare*) a tribune of the plebs or a magistrate of the Roman people to give him aid (*auxilium*) against the action of another magistrate. The tribune or magistrate thus invoked was not, of course, compelled to accede to the citizen's request, but if he did so, he exercised his *auxilium* by vetoing, either *qua* tribune or in virtue of *par maiorve potestas*, the action of the magistrate against whom the appeal had been made.

It is questionable how far this procedure was applicable to civil jurisdiction. In the formulary process, which seems to have been normally followed both in Italy and in the provinces under the late Republic, the part of the magistrate (the praetor at Rome and the governor or his delegates in a province) was limited to issuing executive orders (*decreta*), such as *missio in possessionem*, to determining the *formula* under which a case was to be tried and appointing the *iudex* who was to try it.¹ When these preliminary proceedings (*in iure*) were concluded

* I am indebted to Professors Daube and Duff, Mr. Hugh Last, Mr. John Crook and the late Professor Jolowicz, who read this article in manuscript and made a number of corrections and suggestions which I have incorporated. There are not responsible for my theories.

¹ Lest my language here and elsewhere should offend those who hold that the formula was a statement freely agreed between the parties and the iudex an arbitrator as freely accepted, I would explain that by using such words as 'determine' and 'appoint' I mean

by the *litis contestatio*, the magistrate's part was finished, and the *iudex* tried the case and gave judgment. The judgment of the *iudex*, it is generally held, was not liable to *appellatio*, since he was not a magistrate, nor strictly speaking a delegate, but, in theory, an arbitrator to whom the litigants had submitted their dispute.

There were various means whereby the judgment of the *iudex* could be annulled or rectified. It was possible for the defeated party to contest the *actio iudicati* whereby the successful party sought to obtain execution: if he was unsuccessful in thus impugning the judgment he was liable to pay double the sum in which he had been originally condemned.¹ In certain circumstances an unsuccessful litigant could apply to the magistrate for *restitutio in integrum*, whereby the trial was annulled. He might allege that the trial was vitiated by *metus*,² that is that the judge had been intimidated, or by *dolus*,³ as, for instance, when the witnesses had been bribed. He might also sometimes claim *restitutio* if he had lost his case by some technical error, such as *plus petitio*.⁴ Cicero in a sentence obscure from its brevity, 'decrevit ut si iudicatum negaret, in duplum iret; si metu coactos diceret, haberet eosdem recuperatores', seems to allude to both these remedies as alternatives: the case was between two *peregrini* and took place in the province of Asia, but the proconsul — Quintus Cicero — was clearly using Roman procedure.⁵ A litigant could also bring an action against the *iudex* for corruption, malice or favour, or even negligence. In such circum-

only that in the final resort it was the magistrate who decided under what formula the case should be heard and by what *iudex*, and that he could overrule objections by the parties. Otherwise justice could not have been done, for a defendant with a weak case could have held up the trial indefinitely. Nor would the parties have taken resort to *appellatio* in order to try to get the formula changed, as they did. A plaintiff clearly had to accept the magistrate's rulings, as the latter could refuse to proceed unless he did. Against a recalcitrant defendant the magistrate could presumably bring pressure by threatening a decretum in the plaintiff's favour. Cicero's statement (pro Cluentio, 120) 'neminem voluerunt maiores nostri non modo de existimatione cuiusquam sed ne pecuniaria quidem de re minima esse iudicem nisi qui inter adversarios convenisset' may represent the theory of Roman law, but surely not the practical reality.

¹ Gaius, IV, 9, 'rem vero et poenam persequimur velut ex his causis ex quibus adversus infitiantem in duplum agimus; quod accidit per actionem iudicati . . .': cf. IV, 102 (satisfactio required in this action). Cf. Cic. pro Flacco, 49. There was also an obscure process known as *revocare in duplum*: Paulus, Sent. V. va. 6a, 7, 8, App. leg. Rom. Visig. II, 6, 9, 10.

² Cic. pro Flacco, 49 apparently alludes to a *restitutio* on the plea of *metus*: it was perhaps on these grounds that many of Verres' iudicia were restituta by his successor (Cic. II Verr. II. 62—3).

³ Rescript of Hadrian, Dig. XLII, i. 33.

⁴ Gaius, IV. 53, 57, cf. Suet. Claud. 14. Persons under twenty-five could claim *restitutio in integrum* from the *sententia* of a *iudex* without any specific cause (Ulpian, Dig. IV. iv. 7. § 4) but this was merely a part of the general protection given to minors.

⁵ Cic. pro Flacco, 49.

stances the *iudex* was said *litem suam facere*, and if condemned was liable in damages to the litigant.¹

It may be noted that some of the procedures mentioned above resulted, or might result, in a retrial of the case, and what was in effect a reformatory judgment.² If a defeated litigant brought an action against the *iudex*, the court had presumably to determine whether and in what matters the *iudex* had erred in his judgment in order to assess the damages. *In integrum restitutio* was technically purely cassatory, but was often followed by a new trial. Quintus Cicero in the case mentioned above, where the defeated party alleged that *metus* had vitiated the original trial, decreed that the case should be retried by the same *recuperatores*. A litigant who had failed in his suit owing to *plus petitio* applied for *restitutio* precisely in order that he might be able to reopen his suit with a revised *formula*.³

None of these remedies, however, were obtained by *appellatio*. They continued to exist under the principate side by side with *appellatio* — indeed most of our information about them is derived from the imperial lawyers — and are distinguished from it.

But if no *appellatio* was possible against the decision of the *iudex*, it could be exercised against the preliminary proceedings of the magistrate, and it was at this stage, it may be argued, that an appeal was most likely to arise. By his *decreta* and by his *formula* the magistrate gave his decision on the points of law involved, and the part of the *iudex* was to find the facts and apply the law. Appeals generally arise on legal rather than on factual issues, and against corruption or unfairness on the part of the *iudex* the litigant had other remedies. The case is not quite so simple as this, for the division of the proceedings into those *in iure* and those *apud iudicem* corresponded only imperfectly with the division into issues of law and of fact. The magistrate had to make some preliminary investigation into the facts of the case in order to determine the legal issues. On the other hand the *formula* was a very brief document, and the *iudex* had often to decide complex legal issues in applying it to the case before him.

Nevertheless the proceedings *in iure* were no formality, and we know in fact of several cases in the late Republic in which appeals were made at this stage.

¹ Gaius, IV. 52, Dig. XLIV. vii. 5. § 4, L. xiii 6; Ulpian, Dig. V. i. 15, 16.

² The *actio iudicati* could, it seems, be contested only if the *iudex* had committed some manifest and flagrant error in fact or law (Dig. XLIX. viii. 1).

³ It is true that *restitutio in integrum* might involve *appellatio*. For when the defeated party applied for *restitutio* the other litigant might object and appeal to another magistrate to veto the decree whereby it was to be granted, or alternatively a litigant who was refused *restitutio* by the magistrate under whom the case had been initiated might appeal to another to grant it to him. Neither of these procedures is attested until the Principate (Dig. IV. iv. 38, 39) but there seems no reason why they should not have been possible under the Republic. But in such cases *appellatio* was not made from the sentence of the *iudex*, but from a magisterial act.

In the complicated preliminary proceedings to the trial in which Cicero defended P. Quinctius, the latter's *procurator* Alfenus appealed to the tribunes against a decree of the praetor, and obtained partial satisfaction in that one of them, M. Brutus, threatened to interpose his veto unless the plaintiff Naevius came to a reasonable agreement with Quinctius to enable the latter to appear and plead his case.¹ In the case in which Cicero spoke on Tullius' behalf, the defendant P. Fabius, dissatisfied with the *formula* which the praetor Marcellus proposed, to which he wished the word *iniuria* to be added, appealed to the tribunes, but without success.² In both these cases the *auxilium* of the tribunes would have had a purely negative effect in theory, merely putting a stop to the trial, but the real object of the *appellatio* was by threatening to hold up the action to force the praetor to withdraw his decree or modify his *formula*.

In other cases appeals were made to, or *auxilium* was offered by, a praetor against another praetor in virtue of their *par potestas*. In 48 B. C. "M. Caelius Rufus took up the cause of debtors and at the beginning of his magistracy placed his judgment seat next to the official chair of C. Trebonius, the urban praetor, and promised that if anyone appealed (*appellavisset*) on the payments which were to be made on the basis of a valuation by an arbitrator, as Caesar had ruled in person, he would come to their rescue (*fore auxilio*)".³ According to Caesar no one did appeal. If they had, Caelius would no doubt have been content to veto the proceedings: no further action would have been required, as he would have achieved his object of preventing creditors from collecting their debts.

Another and more interesting case is Verres' urban praetorship. Cicero tells how L. Piso, probably the *praetor peregrinus*, "filled large numbers of ledgers with the cases in which he interceded (*intercessit*) because Verres had made a judicial ruling (*decrevisset*) not in accord with his own edict. You have not forgotten, I expect, the crowd, the procession that used to converge on Piso's official seat when Verres was praetor. If he had not had him as a colleague, he would have been stoned in the forum. But his injuries seemed the lighter because there was in the equity and learning of Piso a ready refuge, which people used without toil or trouble or expense, without even an advocate".⁴

Piso's action may, like that of Caelius, have been purely negative. But Cicero's praise of his equity and learning would seem to be somewhat exaggerated if all he did was in appropriate cases to hold up proceedings until his and Verres' term of office had expired. It may be that, like the tribunes, he used his power of veto to exercise pressure on Verres to change his rulings. But it does not seem impossible that he himself issued *decreta* and *formulae* to dissatisfied litigants in substitution for those of Verres which he vetoed. Whether he was entitled to do so depends on a dubious point in Roman constitutional law — or

¹ Cic. pro Quinctio, 29, 63, 65.

³ Caesar B. C. III. 20.

² Cic. pro Tullio, 38—9.

⁴ Cic. II Verr. I. 119.

perhaps rather practice. When in the *sortitio provinciarum* C. Verres obtained the *iurisdictio inter cives* and L. Piso the *iurisdictio inter peregrinos* did this inhibit Verres from trying a case where a foreigner was involved, and Piso from acting where both parties were citizens? Or did both retain the full power of *iurisdictio* inherent in their *imperium*, and accept a *de facto* division of duties? I know of no evidence against the latter view, in which case Piso was entitled not only to veto Verres' acts, but to issue *decreta* and *formulae* of his own on the same cases. Verres could, of course, have in his turn vetoed Piso's acts, but perhaps he was not such a fool as to expose himself to ridicule by so doing.

We know also of one case where an appeal was made from a praetor to a consul. In 77 B. C. the urban praetor Orestes granted *bonorum possessio secundum tabulas testamenti* to one Genucius, a Gallus of the Magna Mater, whom Naevianus, a freedman, had made his heir. Naevianus' patron, Surdinus, appealed to Lepidus, one of the consuls, who vetoed the praetor's decree (*praetoriam iurisdictionem abrogavit*), on the ground that Genucius was neither a man nor a woman.¹ Valerius Maximus, who tells the story, speaks of Lepidus making a *decretum*. He may not be speaking technically, for, as the appellant Surdinus would inherit as Naevianus' patron if the latter's will were invalidated, it would only be necessary for Lepidus to annul the praetor's decree and no further action was required. But here again there seems to be no reason to doubt that a consul could if he wished issue a decree in substitution for that which he vetoed. It seems unlikely that when the office of praetor was created to relieve the consuls of the task of administering justice, the consuls were thereby deprived of the *iurisdictio* inherent in their *imperium*. One act of jurisdiction, *manumissio vindicta*, they continued to exercise regularly as long as the consulate survived.² Otherwise their powers of *iurisdictio* were normally dormant, but could, it would seem, be brought into action if a citizen appealed to them to intervene in what was normally the business of their junior colleague, the praetor.

Two other more general allusions to appeal may be cited. Cicero, applying legal terms metaphorically to a philosophical argument, says of his opponents: 'tribunum aliquem censeo adeant: a me istam exceptionem numquam impetrabunt'.³ The imaginary case is that of the praetor whom one of the parties is urging to insert an *exceptio* in the *formula*: he refuses, and they appeal to the tribunes, who by vetoing the *formula* will bring pressure on the praetor to make the emendation. The author of the *ad Herennium*, discussing the various kinds of *ius*, distinguishes that created by judicial decisions. 'Iudicatum est id de quo sententia lata est aut decretum interpositum: ea saepe diversa sunt, ut aliud alii iudici aut praetori aut consuli aut tribuno plebis placitum sit; et fit ut de eadem re saepe alius aliud decreverit aut iudicaverit'.⁴ The list of persons who

¹ Val. Max. VII. vii. 6.

² Ulpian, Reg. I. 7; Dig. I. x.

³ Cic. Acad. Prior. II. 97.

⁴ Auct. ad Herenn. II. 19.

thus create law is interesting in that it includes not only the praetor and the *iudex*, who interprets the *formula*, but the consul and the tribune. These two can only have acted on appeal. The tribune, it is true, possessed no formal power of *iurisdictio*,¹ and his intervention could modify the law only indirectly. The consul probably could make legal decisions, but would only do so on appeal. Both passages suggest that appeal to the tribunes was common in civil litigation, and the second provides further evidence for appeal to the consuls.

We have so far spoken only of appeals in the city of Rome. Here the process would be simpler than elsewhere, for the consuls, the tribunes and the other praetors were normally available on the spot to veto the action of the urban praetor. It may be asked whether *auxilium* might not be given at greater range, to litigants who appealed from Italy and the provinces.

In Italy all important cases had to go *ab initio* to the urban praetor at Rome. The municipal magistrates had in general jurisdiction only in minor cases, when the sum at issue was less than 15,000 sesterces.² In these cases there was presumably an appeal from one municipal magistrate to another. But it also seems to have been possible for a litigant to obtain a *revocatio Romae*. This is implied in a clause preserved in the *Fragmentum Atestinum*³ which is probably part of the *Lex Rubria* whereby the jurisdiction of the magistrates of all newly enfranchised communities of Transpadane Gaul was regulated. The clause is retrospective, and lays down that in any private suit, whatever the amount involved, in which a duovir, or other person vested with jurisdiction by law, treaty, *senatus consultum* or custom, possessed *iurisdictio* before the *Lex Roscia*, the present law should not have the effect 'quo magis privato Romae revocatio sit quove minus quei ibei iuri dicundo praeit de ea re ius dicat'. This apparently means that cases already initiated under the local magistrates, when the towns were still Latin communities and therefore judicially independent, were to be carried to their conclusion by the local magistrates. And it implies that in the future, it would be possible for a litigant in a case initiated before a local magistrate of a Roman *municipium* to obtain *Romae revocatio*.

In a province the only magistrates possessing *iurisdictio* were the governor and those to whom he delegated his powers — normally his legates and his quaestor, sometimes also his *praefecti*. An appeal would naturally lie from these delegates to their chief, but, as Cicero remarks in the *Verrines*, there was no very practicable remedy against a 'praetor improbus, cui nemo intercedere pos-

¹ Pomponius (Dig. I. ii. 2. § 34) states that the tribunes of the plebs, as well as the consuls, praetors and aediles, in civitate iura reddebant. But he also is probably only speaking of their indirect influence. When the tribunes were appealed to they might hold an enquiry (cognoscere) on the issue to determine whether to receive the appeal (see Asconius, in Mil. 41), and such cognitiones, which were put on record, might be cited as legal precedents. Such tribunician cognitiones, which might in effect decide a case, are mentioned under the Principate in Juvenal, VII. 228, Aulus Gellius XIII. 12, and apparently Tac. Ann. XIII. 28.

² *Lex Rubria* (Bruns, Fontes⁷. 16), cap. xxi, xxii.

³ Bruns, Fontes⁷, 17.

sit', if he issued arbitrary decrees, pronounced inequitable *formulae* or appointed corrupt *iudices*.¹ In the provinces also, however, a litigant who took prudent precautions could secure a *revocatio* or *reiectio Romae*. It was not a right, it would seem. P. Scandilius, a Roman knight, instituted a *sponsio* against Apronius before Verres; objecting to the latter's choice of *recuperatores*, he demanded a *reiectio Romae* ('postulat abs te ut Romae rem reicias'), but Verres refused outright.² But in another case the litigant took precautions beforehand. L. Mescinius, Cicero's former quaestor, was heir to the estate of a deceased cousin, M. Mindius, a *negotiator* at Elis. Anticipating legal difficulties he got Cicero to write to Servius Sulpicius, the proconsul of Achaëa, asking him to expedite his affairs. In particular Cicero asks Sulpicius to send back to Rome (*Romae reieceris*) any troublesome opponents of Mescinius. Finally, he tells Sulpicius, "to enable you to do this with less hesitation, I have obtained a letter to you from the consul M. Lepidus, not to give you any orders ('non quae aliquid te iuberent'), for that I thought would not accord with your dignity, but if I may so put it, a letter of advice'.³

This letter gives a clue to the true nature of *Romae revocatio*. In asking for it a provincial litigant announced his intention of appealing from the proconsul to the consul at Rome, whose *imperium* extended to all provinces and was *maius* in relation to that of their proconsuls; for as Cicero remarks, 'omnes in consulis iure et imperio debent esse provinciae'.⁴ A reasonable proconsul would no doubt usually allow the litigant to go to Rome and make his appeal, but as it was not physically possible for him to make the actual appeal except after a long delay, a stubborn proconsul would ignore his request and proceed with the trial. A litigant could only make sure of securing a *revocatio Romae* by approaching the consul beforehand, as Mescinius did through Cicero's agency, and getting from him a letter in which he informed the proconsul that he would give his *auxilium* if an appeal were made to him, and ordered him in that case to remit the case to Rome. This seems to have been the practice in the provinces. In Italy, it would appear, the *Lex Rubria* gave a statutory right to the litigant to obtain *Romae revocatio*: the local magistrates were in effect given standing orders to allow appeals to Roman magistrates.

There seems thus to have existed under the later Republic a rudimentary form of appeal. The appeal was made against the magistrate's acts *in iure*, against his *decreta* or the *formula* or the choice of *iudex*. In Rome, to judge by

¹ Cic. II Verr. II. 30.

² Cic. II Verr. III. 138.

³ Cic. ad Fam. XIII. 26. Cicero would surely not have so elaborately explained that the consul's letter was not in this case a command unless consular commands to proconsuls had been normal practice in such circumstances. Proconsuls no doubt often resented such interventions, which might be regarded as reflections on their probity; hence Cicero's laboured apology to his honoured — and perhaps touchy — friend.

⁴ Cic. Phil. IV. 9.

the number of cases which occur in our very limited body of evidence and by way in which the procedure is taken for granted both in these cases and in more general allusions to litigation, appeal was quite a common practice. In some cases the appeal was purely cassatory, but in others it caused the magistrate against whom the appeal was made to revise his decision. And in some cases it is probable that the magistrate to whom the appeal was made substituted a new decision for that which he vetoed. In Italy appeals from the local magistrates to the magistrates at Rome were apparently guaranteed by statute. In the provinces the appeal was less developed. A litigant could ask leave to appeal to the consuls, and the average proconsul would probably give him leave. But a proconsul could only be forced to allow an appeal by application in advance to the consuls.

Civil Appeals in the Principate

Civil appeals to the emperor, both from Italy and the provinces, were already very common under Augustus. So common were they that, according to Suetonius, Augustus was unable to deal with them personally, but regularly each year delegated this appellate jurisdiction, assigning provincial appeals to men of consular rank specially appointed to deal with cases from each province, and those of *urbani litigatores* to the urban praetor.¹ Nero, according to Tacitus, ruled in A. D. 60 that those who appealed from private judges to the senate, should incur the same pecuniary risk as those who appealed to the emperor.² This statement shows that the emperors had already protected themselves against a deluge of frivolous appeals by demanding a *poena appellationis*, that is a deposit which was forfeited if the appeal was rejected.³ Secondly it proves that appeals might at this date — and probably from the beginning of the Principate — be made either to the emperor or to the consuls; for, as only a magistrate could possess jurisdiction, the senate in this context must mean the consuls using the senate as their *consilium*.

The constitutional basis of these appeals is most naturally explained by the Republican precedents discussed above. The consuls had under the late Republic received appeals from the urban praetor and from proconsuls, and they continued to do so. Augustus, in virtue of the *consulare imperium* which he received in 19 B. C.,⁴ and his successors after him, had all the powers of the consuls, and therefore could like them receive appeals from the praetor and from

¹ Suet. Aug. 33. 3.

² Tac. Ann. XIV. 28.

³ Paulus, Sent. V. 35.

⁴ I have endeavoured to prove this in 'The Imperium of Augustus', JRS 1951, 112—19. Those who are unconvinced by this article need not necessarily reject my argument here. For even if Augustus received no formal grant of consular imperium, it is abundantly clear that he exercised an imperium indistinguishable from that of the consuls in Rome and Italy (see the examples quoted in my article, pp. 117—8).

proconsuls. They furthermore as proconsuls of their own group of provinces received appeals from the *legati* to whom they mandated their jurisdiction in them. All appeals from the imperial provinces would thus naturally be made to the emperor. Appeals from Italy and the public provinces might constitutionally be made either to the emperor or to the consuls. Nero, indeed, on his accession announced, 'consulum tribunalibus Italia et publicae provinciae adsisterent', and his words probably allude to appeals among other things: Suetonius' statement that he ruled, 'ut omnes appellationes a iudicibus ad senatum fierent,' may well be an exaggerated version of the same announcement.¹ But this was not a ruling on constitutional law, but a statement of policy. In fact most litigants preferred the emperor, and Augustus, as we have seen, did receive appeals from Italy and from the provinces in general — Suetonius makes no distinction, and in fact most appeals would have come from the public provinces, where Roman citizens were numerous, and relatively few from the imperial provinces, where they were scarce.

The increased volume of appeals must be put down to the policy of Augustus. It must be presumed that he made it known to the public, by edict or more informally, that he and the consuls were willing to receive appeals. He no doubt definitely instructed his *legati* to allow appeals from themselves to him, and his *auctoritas*, backed by his *maius imperium*, will have been sufficient to make proconsuls yield to any litigant who expressed a wish to appeal from themselves to Augustus or the consuls. So far no constitutional or legal innovation need be assumed except the grant of *consulare imperium* to Augustus. The change is only one of practice, that the volume of appeals increases and the right of appeal becomes automatic, and this change is achieved by Augustus through his *auctoritas*.

What is to all appearances novel is that the appeals to the senate come from *iudices* and no longer from magistrates. There can be little doubt that when Tacitus speaks of *privati iudices* (and Suetonius of *iudices*) he means the *privati iudices* of the formulary procedure, and not *iudices extra ordinem dati*. It is true that in the early Principate, as will be recorded later, the emperor, the consuls and certain special praetors had begun to try exceptional cases, or special categories of cases, like *fideicommissa*, by the process of *cognitio*. It may be that they already had so much jurisdiction of this kind brought to them that they sometimes delegated a case to a *iudex extra ordinem datus*, whose sentence was appellable. It is also probably true that in the provinces *cognitio* was employed more freely: even under the Republic a provincial governor was apparently entitled to reserve cases for his personal *cognitio*,² and he may have delegated

¹ Tac. Ann. XIII. 4, Suet. Nero 17.

² Though the formulary procedure was normal in Sicily for all civil cases, whether between Romans or peregrini, Verres tried two inheritance cases himself by *cognitio* (Cic. II Verr. II. 19—20, 25—6), and since Cicero does not protest, he was evidently within his

some *extra ordinem* to *iudices*. But it seems very unlikely that by the time of Nero — or even by that of Trajan, assuming that both Tacitus and Suetonius are being anachronistic — *cognitio* and the appointment of *iudices extra ordinem dati* can have been a regular practice, particularly in Italy and the public provinces, to which their remarks primarily refer. Gaius, writing under Antoninus Pius, assumes that the formulary procedure is invariably followed, save for such exceptional matters as *fideicommissa*.¹ In his Institutes he is writing primarily about the praetor's court at Rome, but in the occasional references which he makes to provincial procedure, he assumes it to be the same;² and enough of his work on the Provincial Edict survives to indicate that the procedure which Gaius there described was the formulary.³ In some provinces, it is true, *cognitio* seems to have been prevalent; the papyri have revealed few if any examples of the formulary procedure in Egypt, despite the fact that the prefect had the jurisdiction of a Roman magistrate.⁴ But it was probably in the more recently acquired imperial provinces that the new procedure prevailed. Under the Republic the formulary procedure had been generally used, in the provinces, both for Romans and for *peregrini*, and in the provinces which dated back to the days of Republic — that is in all the public and some of the imperial provinces — it probably survived.

Tacitus' words must then mean that in Nero's reign appeals to the senate (and by implication to the emperor also) were normally made not from the magistrate *in iure* but from the *iudex*. Suetonius' description of the way in which Augustus handled appeals implies that this was already the rule in his reign. Augustus, he says, regularly each year delegated the appeals of *urbani litigatores* to the urban praetor. The term *urbani litigatores* probably covers Italy as well as Rome itself, for Suetonius contrasts them with provincial litigants, and all Italy fell within the jurisdiction of the urban praetor. The appeals in question might therefore come from municipal courts, but as they were only competent to deal with minor cases, it is unlikely that many did. Any major suit had to come before the praetor at Rome, and if the appeal were made *in iure* it would be against the praetor's own ruling. It would have been a mockery for Augustus

rights as far as procedure went. Both cases concerned peregrini, but there is no reason to think that a governor could not exercise *cognitio* in cases between Romans.

¹ Gaius, II. 278.

² Gaius, IV. 109.

³ It may be noted that in this work he alludes to appeals from *iudices* (Dig. II. viii. 9).

⁴ Tac. Ann. XII. 60, 'nam divus Augustus apud equestris qui Aegypto praesiderent lege agi decretaque eorum proinde haberi iusserat ac si magistratus Romani constituissent': their jurisdiction even included manumission (Dig. XL. ii. 21, 'apud praefectum Aegypti possum servum manumittere ex constitutione divi Augusti'). I do not fully understand why P. Mich. III. 159 (= Riccobono, Fontes², III. 64) should not be regarded as a trial under the formulary procedure; and in BGU 114 (= Riccobono, Fontes², III. 19) the prefect in saying ἐκ τῶν τοιοῦτων αἰτιῶν κριτὴν οὐ δίδωμι, appears to be acting under the same procedure.

to delegate to the urban praetor, as a standing rule, the trial of appeals made to him against the praetor's own decisions. Augustus' conduct is scarcely intelligible unless the appeals which came to him were against *privati iudices* given by the praetor, not against the praetor himself.

If the *iudex* had been inappellable under the Republic, this was a striking innovation. Some modern authorities have taken it as such, and have sought to explain it by the power 'to judge on appeal' (ἐκκλητηὸν δικάζειν) given to Octavian in 30 B. C.¹ This power, as will be argued later, was probably concerned with *provocatio* in capital cases. It cannot be the explanation of civil appeals from *privati iudices* to the senate; for it was a personal grant to Octavian.

It is, however, by no means as certain as would appear from the modern legal textbooks that the judgment of a *privatus iudex* was inappellable under the Republic. No ancient author asserts that this was the case, and the doctrine is in fact based purely on an argument from silence.² No appeals are recorded from the judgments of *iudices* whereas we hear of several appeals from the proceedings of magistrates. This is a rather flimsy basis for what has become a central doctrine of Roman law. In so far as the argument from silence is worth anything, it applies only to trials held in Rome itself, where our evidence is relatively abundant. Here it may be argued with some plausibility that had it been possible to appeal from a *iudex* Cicero would have alluded to such appeals. For trials in the provinces, or for that matter in Italy, our information is so slight that no negative conclusions can be drawn from it.

Gaius draws a distinction between *iudicia quae legitimo iure consistunt*, for short *legitima iudicia*, and *iudicia quae imperio continentur*.³ The former class comprise trials before a single *iudex* between Roman citizens in Rome or within one mile, the latter all other trials. It is not clear from Gaius' words, or from the examples which he gives, in which class *iudicia* held in Italy outside Rome would fall. The words he uses are '*iudicia quae in urbe Roma vel intra primum urbis Romae miliarium inter omnes cives Romanos sub uno iudice accipiuntur*', which might equally well mean cases which were initiated at Rome, or were tried at Rome. On the former alternative, since the proceedings *in iure* in all cases took place before the praetor at Rome, all Italian suits would be *legitima*. On the latter alternative, when the proceedings before the *iudex* took place outside Rome, as they well might when the case concerned parties domiciled in an Italian town, an Italian suit would be *imperio continens*. As examples he

¹ This is apparently the view advanced by Perrot, *L'appel dans la procédure de l'ordo iudiciorum*, Paris, 1907 (not accessible to me), cited by Jolowicz, *Historical Introduction to Roman Law*², 576.

² I have found no reference given for the doctrine in any textbook of Roman law. Mommsen (*Staatsrecht*³, I. 272, note 2) can argue only from silence.

³ Gaius IV. 103—9.

quotes the two extremes, Rome or the provinces, leaving Italy ambiguous, but his wording ('si... in provinciis agatur' or 'si Romae apud recuperatores agamus') suggests that he regards the place of the actual *iudicium* as being decisive.

Gaius cites two ways in which these two types of *iudicia* differ. In the first place *iudicia legitima* were extinguished unless brought to a conclusion within eighteen months: this time limit was imposed by the *lex Iulia iudiciaria*, and it is to be inferred that there had before that law been none. *Iudicia quae imperio continentur* on the other hand were extinguished when the *imperium* of the magistrate who ordered them came to an end. The implication of this rule is that the authority of the *iudex* in this type of *iudicium* was derived from the *imperium* of the magistrate, and only lasted so long as the magistrate continued to hold his *imperium*. In a *iudicium legitimum*, on the other hand, the authority of the *iudex* is quite independent of the *imperium* of the praetor, and rested on a *lex*, presumably the *lex Aebutia*, which legalised the formulary procedure. In the second place decisions of *iudicia legitima*, if the *formula* were framed according to the *ius civile*, were *ipso iure* final; the same issue could not be tried again. The decisions of *iudicia quae imperio continentur*, on the other hand, were not in strict law final: the praetor only made them so by granting an *exceptio rei indicatae vel in iudicium deductae*, thus maintaining them by his *imperium*.

These distinctions suggest that there may have been a constitutional difference between trials at Rome and those elsewhere. At Rome the *iudex* held his authority by *lex*, his judgment was legally final. Outside Rome his authority was derived from the *imperium* of the magistrate who appointed him and his judgment was only final in so far as the magistrate maintained it. Gaius has nothing to say here or elsewhere on the subject of appeal, but it might reasonably be conjectured that, while the *iudex* judging between Roman citizens at Rome was inappellable, the *iudex* elsewhere, or when a *peregrinus* was involved, seeing that he derived his authority from a magistrate, was like the magistrate himself subject to *appellatio*.

If this suggestion be accepted, no constitutional change need be postulated. In Rome itself the *iudex* will have been inappellable under the Republic, and have remained so under the Principate: we have no evidence that he was not. Appeals from *privati iudices* in the provinces and in Italy will have been legal under the Republic but probably rare owing to practical difficulties. Under the Principate they will have become commoner because Augustus encouraged appeal in general. Appeals from *iudices* would in the normal course go to the magistrate from whom they derived their authority, in Italy to the praetor, in a province to the governor or his delegates. There was however no constitutional reason why a litigant should not appeal to another magistrate with *maior potestas*; as Paulus says, '*iudicium solvitur vetante eo qui iudicare iusserat*

vel etiam eo qui maius imperium in ea iurisdictione habeat'.¹ Later emperors discouraged provincial litigants from bypassing the governor and appealing directly to themselves,² but in the early Principate, before appellate jurisdiction became regular and systematic, they may well have been more willing to take appeals direct from *iudices*. Indeed if their object was, partly at any rate, to check injustice by provincial governors, it would have been foolish to insist on all appeals coming through them. In Italy Augustus by delegating appeals to the urban praetor redirected them to the magistrate to whom they would have appropriately gone in the first place: the praetor, judging at Rome under his own eye, was unlikely to take liberties with the law.

The Primary Civil Jurisdiction of the Emperors and the Consuls

It has already been argued that the consuls always retained their power of jurisdiction, though after the creation of the praetorship they ceased to exercise it regularly, perhaps only when appealed to from the praetor. When Augustus in 19 B. C. received the *consulare imperium* he acquired a power of jurisdiction like that of the consuls. He not only used it regularly in appellate jurisdiction, but, it would seem, occasionally in the first instance. The scanty evidence suggests that he did not take cases when the praetor could furnish a remedy by the *ordinarium ius*, but used his jurisdiction to supplement or modify the *ordinarium ius* when it seemed to him to be inequitable or contrary to public policy. Valerius Maximus cites two judgments of Augustus which appear to have been given in the first instance.³ In one he gave possession of his father's inheritance to a son who had been disinherited as an infant, although his father had lived in matrimony with his mother till the day of her death (presumably in childbirth).⁴ In the other a widow had married an old man when herself beyond the age of childbirth and cut her two sons by her former marriage out of her will: Augustus not only quashed the will, but compelled the second husband to refund the dowry.⁵ These decisions, which go beyond the law, were evidently dictated by the same social policy which inspired the *lex Iulia de maritandis ordinibus*.

Augustus also intervened to give legal sanction to *fideicommissa*, but here he seems to have made use of the dormant jurisdiction of the consuls. The story

¹ Dig. V. i. 58.

² Rescript of Marcus and Verus, Dig. XLIX. i. 21. pr. and § 1.

³ Valerius Maximus does not suggest that these cases arose by appeal from the praetor's decision, and indeed it is difficult to believe that the injured parties would have approached the praetor, as under the *ius ordinarium* they had no possible claim. Augustus' decisions may well have formed precedents for the later *querela inofficiosi testamenti*. Claims under this heading were not decided *extra ordinem*, but by the centumviral court (Pliny, Ep. V. 1, Dig. V. ii. 13, 17) under the fiction that the testator was not of sound mind (Dig. V. ii. 2, 5).

⁴ Val. Max. VII. vii. 3.

⁵ Val. Max. VII. vii. 4.

is told in Justinian's Institutes.¹ A certain L. Lentulus died in Africa, leaving *codicilli* in which he requested Augustus himself *per fideicommissum* to make certain dispositions of his property. Augustus, after taking the advice of juriconsults, decided to regard the *codicilli* as a valid will, and executed the *fideicommissa*: Lentulus' daughter, encouraged by his example, also carried out the *fideicommissa* enjoined upon her by her father. So far Augustus had been acting merely as a private citizen, though naturally his *auctoritas* carried great weight. Later other cases arose in which Augustus, though not himself asked to execute the *fideicommissa*, was moved to intervene either out of personal regard for the injured parties, or by the fact that the testator had adjured the heir by the emperor's safety, or merely by the notorious bad faith of the heir. In these cases, according to Justinian, he ordered the consuls to interpose their authority ('iussit consulibus auctoritatem suam interponere'). Suetonius gives a slightly different picture when he states that before Claudius the jurisdiction on *fideicommissa* was normally delegated to magistrates in Rome,² implying that Augustus himself held the new jurisdiction but delegated its exercise to the consuls. Claudius definitively assigned it to the consuls and to two special *praetores fideicommissarii* at Rome, and extended it to the provinces, where the provincial governor exercised the jurisdiction.³

Another quasi-judicial function which the consuls acquired during the Julio-Claudian period was the appointment of tutors. The regular procedure under the *Lex Atilia* was not altogether satisfactory, and Claudius enacted that tutors might be appointed *extra ordinem* by the consuls.⁴ No further specific cases are known, but in one way or another the consuls acquired considerable judicial functions. Towards the end of Augustus' reign Ovid already regards jurisdiction as one of the prominent functions of a consul, and Suetonius distinguishes Claudius' judicial work as consul and when not holding that office⁵. Much of this consular jurisdiction was no doubt appellate.

Both the emperor and the consuls exercised their primary jurisdiction only in cases which were not covered by the *ius ordinarium* or where its operation was unsatisfactory or inequitable. Seeing that their jurisdiction was thus *extraordinaria*, they were not bound to observe the cumbrous procedure of the *ordo*, but could employ the simpler and more expeditious *cognitio*. In one of the two testamentary cases which Augustus took he is said to have decreed a *missio in bona* by *decretum* as the praetor might have done if the case had been

¹ II. 23. § 1 and 25. pr.

² Suet. Claud. 23. 1.

³ For the special praetors see Pomponius in Dig. I. ii. 2. § 32; for the jurisdiction of the consuls and provincial governors, Gaius, II. 278, Ulpian, Reg. XXV. 12. Quintilian (III. vi. 70) shows that application was made directly to the consul or praetor at Rome.

⁴ Suet. Claud. 23. 2, cf. Just. Inst. I. 20. § 3.

⁵ Ovid, ex Ponto IV. v. 17, ix. 43, Suet. Claud. 14.

covered by the edict.¹ In the other he is by implication spoken of as holding a *cognitio*.² The consuls' jurisdiction on *fideicommissa* was certainly exercised by *cognitio*,³ and in general the terms *cognoscere* and *cognitio* are always used of the emperor's jurisdiction.⁴ It seems likely that *cognitio* was employed also in the appellate jurisdiction of the emperor and the consuls.

The Capital Jurisdiction of the Emperor and the Senate

In civil jurisdiction, I would submit, there was no sharp break in theory between the later Republic and the early Principate. No new forms of jurisdiction were created by legislative enactment. A new judge did appear in the person of the emperor, but his power of jurisdiction arose out of the consular *imperium* with which he was invested. In practice Augustus did innovate, it would seem, by resuscitating the apparently dormant primary consular jurisdiction both in his own person and in that of the consuls. He also greatly extended the consular appellate jurisdiction, which was probably rarely exercised in the Republic, and here again he not only exercised this jurisdiction himself, but encouraged the consuls, using the senate as their *consilium*, to do likewise.

In capital jurisdiction on the other hand, a sharp break appears between the later Republic and the Principate. Under the later Republic the only authority competent to pass a capital sentence on a Roman citizen was a *iudicium publicum*, one of the jury courts at Rome established by a series of statutes and consolidated under *leges Corneliae* of Sulla.⁵ The *imperium* of the magistrates was inhibited by the right of *provocatio*, which by now applied everywhere and in all circumstances, in the provinces as in Italy and Rome, in war as in peace.⁶ It is difficult to conceive how the courts at Rome can have handled all criminal cases arising throughout the empire, and it has been conjectured that *de facto* many criminals must have been executed summarily, both in Rome by the magistrates and in the provinces by the governors, if their guilt was regarded

¹ Val. Max. VII. vii. 3, 'Divus Augustus in bona paterna ire decreto suo iussit'.

² Val. Max. VII. vii. 4, 'si ipsa aequitas hac de re cognosceret, possetne iustius aut gravius pronuntiare'.

³ Ulpian, Reg. XXV. 12, Dig. L. xvi. 178; Quintilian, Inst. Or. III. vi. 70.

⁴ Suet. Aug. 93, Claud. 15, Nero 15, Dom. 8. 1. The anecdote told in Claud. 15 is particularly interesting. Claudius proposes to try a case, the defendant objects that it is not 'cognitionis rem sed ordinarii iuris', thus implying that the imperial jurisdiction always takes the form of *cognitio*, and furthermore that such *cognitio* is improper in cases where the *ius ordinarium* is applicable.

⁵ There is a mysterious allusion in the *lex Iulia Municipalis* (Bruns, *Fontes*⁷, 18, line 119) to municipal *iudicia publica* ('queve in eo municipio colonia praefectura foro conciliabulo quouis erit iudicio publico condemnatus est erit'), but it is scarcely possible to believe that a municipal court had capital jurisdiction.

⁶ See my article, 'I appeal unto Caesar', in *Studies presented to David M. Robinson*, pp. 918—9.

as manifest or they could be induced to make a confession. But the law was explicit, and was reaffirmed in the most stringent terms by a *lex Iulia de vi publica*. It is cited in slightly variant forms by Paulus¹ and by Ulpian,² and enacted the death penalty against anyone who, possessing any *imperium* or *potestas*, executed, flogged, tortured or put in bonds any Roman citizen 'adversus provocationem' (Ulpian) or 'antea ad populum nunc ad imperatorem appellantem' (Paulus).

In spite of the *lex Iulia de vi publica* we have indubitable evidence that under the Julio-Claudians both the emperor and the senate tried capital cases and passed and executed death sentences without any hint of *provocatio*. Both forms of trial appear in the Annals as well established at the beginning of Tiberius' reign, and it is hardly necessary to cite the abundant evidence. It may suffice to recall the preliminaries to the trial of Piso, which illustrate the relations of the imperial and senatorial courts and the *iudicia publica*.³ One of the accusers, Fulcinus Trio, lodged a charge of murder against Piso before the consuls (who, as is generally admitted, were legally the judges, using the senate as their *consilium*). Other accusers, including Vitellius and Veranius, objected that they had a better claim to prosecute the case, but soon joined forces with Trio. Tiberius was then asked (presumably by the combined accusers, Trio having withdrawn his charge before the consuls) to take the case. Piso for his part, according to Tacitus, did not object ('quod ne reus quidem abnuebat') as he hoped for a fairer trial from the emperor. Tiberius, however, having held an informal preliminary hearing, sent the case back to the senate without taking any action ('integramque causam ad senatum remittit'). In the senate he opened the proceedings by a speech in which he claims as the only special concession ('super leges') to Germanicus' memory that his death should be investigated 'in curia potius quam in foro, apud senatum quam apud iudices', that is, in the regular *quaestio de sicariis et venificis*.

From this account it appears that the normal court for murder cases was the *iudicium publicum*, but that accusers could ask either the consuls or the emperor to take a case. The emperor — and presumably the consuls also — could either refuse or accept the charge. Tacitus' words might be taken to mean that the consent of the accused was required for trial before the emperor or the senate, but no such right is elsewhere mentioned, and Tacitus probably merely means that Piso was not sorry that he would be tried by Tiberius, not that he did not lodge a formal objection. The new procedure was generally employed in cases which concerned persons of high rank, especially senators, or were of political importance: charges of *maiestas* and *res repetundae* tended to come before the senate.

There is not much evidence for the new procedure under Augustus. When

¹ Sent. V. 21. 1.

² Dig. XLVIII. vi. 7.

³ Tac. Ann. III. 10 and 12, cf. also II. 79.

in 21 A. D. Silanus, proconsul of Asia, was about to be tried before the senate for extortion, Tiberius ordered the *libelli* of Augustus on Volesus Messala, proconsul of Africa about 12 A. D., and the *senatus consultum* passed against him, to be read¹. Tacitus also informs us that Augustus first employed the law of *maiestas* to punish libel in the case of Cassius Severus, who, he tells us elsewhere, was banished to Crete by the judgment of the senate under oath.² Ovid's complaint to Augustus,³

"nec mea decreto damnasti facta senatus
nec mea selecto iudice iussa fuga est",

implies that by A. D. 8 a trial before the senate was a normal alternative to a *iudicium publicum*. It is usually held that the *senatusconsultum Calvisianum* of 4 B. C.,⁴ whereby provincials who wished to obtain monetary compensation, without bringing a capital charge against the magistrate concerned, could prosecute by a special procedure before the senate, proves that capital cases could not yet at this date be heard by the senate. The argument does not appear to be conclusive, for it is possible that it was only the new simplified procedure, and not a trial in the senate, which was excluded in capital cases. There is however no earlier evidence for senatorial trials than that of Ovid, which implies that it was well established by A. D. 8.

Trials before Augustus personally are less well attested. There are two or three undated anecdotes in Suetonius. In one Augustus, trying a man for parricide, endeavours by a leading question to induce him not to confess the crime, to avoid having to impose the penalty of the sack. In the other he is trying the case of a forged will, and to prevent all the witnesses being punished as the *lex Cornelia* directed, gave out to those who were assisting in the trial ('*simul cognoscentibus*') not only tablets of acquittal and of condemnation but a third granting pardon to witnesses who had affixed their seals in error.⁵ Suetonius' language is not very clear, but he can hardly mean that Augustus was intervening in a normal trial before a *quaestio*: he seems rather to be conducting a *cognitio* himself, with the assistance of his *consilium*, whose votes he collects. Finally there is an anecdote recorded by Dio under A. D. 10. Here a quaestor, accused of murder, persuades Germanicus to speak on his behalf: his accuser asks Augustus to take the case himself, fearing Germanicus' influence over the regular jurors in the *iudicia publica*, but Augustus refuses.⁶ This evidence is not in itself impressive, but the fact that Tiberius, who clung so firmly to Augustan precedent, was prepared to take Piso's case shows that the imperial criminal jurisdiction must have been established under Augustus.

Trial of capital cases by the emperor or by the consuls was a startling innovation. In the late Republic the right of the consuls, even when supported by the *senatusconsultum ultimum* in a time of civil commotion, to execute Roman

¹ ib. III. 68.

² ib. I. 72 and IV. 21.

³ Ovid, *Tristia*, II. 131—2.

⁴ SEG IX. 8. v.

⁵ Suet. Aug. 33. 51.

⁶ Cassius Dio LVI. 26.

citizens without *provocatio* was hotly contested. And since the last test case in 63 B.C. the principle of *provocatio* had been emphatically reasserted by the *lex Iulia de vi publica*. It is inconceivable that Augustus can have himself assumed this jurisdiction, or allowed the senate to assume it, without statutory authority, and one must postulate a law conferring capital jurisdiction on the consuls and the emperor. This capital jurisdiction was exercised under the same statutes which governed the *quaestiones*, the *leges iudiciorum publicorum*. In all the many senatorial and the fewer imperial trials recorded by Tacitus and Pliny the offence is always one of those defined in the statutes, usually *maiestas* or *res repetundae*, but also others such as *falsum* or *adulterium* or murder. The trial is conducted according to the terms of the statutes, even if these were sometimes enlarged by interpretation, as when libel was brought within the definition of *maiestas*¹. The penalties were also those of the laws, though the senate claimed the right 'mitigare leges vel intendere'.² It certainly did not always exact the full statutory penalty, which was in most cases death: and in so far as it actually exacted the death penalty, it may be said to have made the laws more severe, in that it had under the later Republic been so long customary to allow a condemned man to go into exile that this probably was regarded as the normal 'poena legis'.³

The clue to the new jurisdiction of the consuls and the emperor under the *leges iudiciorum publicorum* is, I suggest, to be found in a passage of Papinian,⁴ where he condemns the impropriety of 'magistratus qui cum publici iudicii habeant exercitationem lege vel senatus consulto delegatam veluti legis Iuliae de adulteriis vel quae sunt aliae similes, iurisdictionem suam mandant,' and cites as evidence for his view 'quod lege Iulia de vi nominatim cauetur ut is cui optigerit exercitio possit eam si proficiscatur mandare' (and therefore, he argues, in no other circumstances). The *lex Iulia de vi* apparently laid down rules governing the conduct of magistrates to whom had been granted 'publici iudicii exercitio'. These can hardly be the praetors or *iudices quaestionum* who presided over the courts at Rome, but must be other magistrates who have obtained special authority to exercise the criminal laws. This at any rate was the interpretation put upon the law by Papinian, who is arguing "quaecumque specialiter lege vel senatusconsulto vel constitutione tribuuntur, mandata iurisdictione non transferuntur".

¹ Tac. Ann. I. 72.

² Pliny Ep. IV. 9. 17. cf. II. 11. 2.

³ Levy (Sb. Ak. Heidelberg, Phil. Hist. Kl., 1930—I, Abh. 5) has demonstrated that in the *leges Corneliae* the penalty remained technically death, and it may well be doubted whether, despite Cic. Phil. I. 23, Caesar's laws on *vis* and *maiestas* made any formal change. The occasional attempts to justify the milder penalty of *aquae et ignis interdictio* as being that of the laws (Tac. Ann. III. 50, XIV. 48) were probably based rather on the invariable Republican interpretation of the laws than on their text.

⁴ Dig. I. xxi. 1.

We do not know upon which magistrates the *lex Iulia* conferred *exercitio iudicii publici*, but if the list opened with the consuls or those invested with consular *imperium*, the criminal jurisdiction of the emperor and the senate would be explained. I have argued elsewhere¹ that proconsuls are attested to have possessed authority to try Roman citizens without appeal for *crimina iudiciorum publicorum* in the last decade of the first century, and it is possible that they too were granted this jurisdiction by the *lex Iulia*. There is no evidence that *legati Augusti pro praetore*, the prefect of Egypt, or procurators acquired criminal jurisdiction over Roman citizens till a much later date. It would be more in accord with constitutional propriety if the original grant had been made to the consuls and others holding a consular *imperium*, that is the emperor and proconsuls. The language of Papinian suggests that the original list, laid down by the *lex*, was extended by *senatus consulta*, and ultimately by imperial constitutions. We are told by Ulpian that Caracalla authorized even procurators who governed no province to try cases under the *lex Fabia de plagiariis* and the *lex Iulia de adulteriis*².

It may be also that the *lex Iulia* laid down rules for the conduct of trials. The consuls in fact always held trials before the senate, whose vote seems to have been binding upon them. It is possible that proconsuls were also required to constitute a jury of Roman citizens, by whose verdict they had to abide. One of Augustus' Cyrenaean edicts reveals that in that province the proconsul might try capital charges against *peregrini* either by personal *cognitio* or by a jury court (συμβούλιον κριτῶν)³. Another reveals that this jury court was drawn from Roman citizens possessed of 2500 denarii or more⁴. The edicts concern only the trials of *peregrini*, and it has generally been assumed that the jury court existed only for their trial and that Romans were not subject to the capital jurisdiction of the proconsul. The wording, however, might be held to support the opposite view. Augustus advises the proconsul to enrol an equal number of Greeks on the panel from which jurors are to be drawn "in the capital cases involving Greeks" (ἐν τοῖς θανατηφόροις τῶν Ἑλλήνων κριτηρίοις), and to constitute a jury half of Romans and half of Greeks if "a Greek accused" (Ἑλλήν κρινόμενος) so desires. It would seem unnecessary to insert the word "Greek" in these two places if the court dealt with Greeks only, and it may well be that it was empowered to try Romans also. The existence of jury courts of this type, modelled on the *iudicia publica* of Rome, is attested nowhere else in our sources. They may have been an innovation introduced by the *lex Iulia de vi*, intended primarily to try capital charges against Romans under

¹ See my article cited above p. 478, n. 6, p. 921. The test cases are Pliny. Ep. II. 11 and X. 58.

² Collatio, XIV. iii. 2—3.

³ SEG IX. 8. iv.

⁴ SEG IX. 8. i.

the *leges iudiciorum publicorum*. They do not seem to have had a long life, being superseded by the *cognitio* of the governors.¹

If my reconstruction be accepted, the *lex Iulia de vi publica*, at the same time that it reaffirmed the Roman citizen's right of *provocatio*, greatly limited its scope by extending capital jurisdiction under the *leges iudiciorum publicorum*, against which there was no *provocatio*. Hitherto exercised only at Rome by the *quaestiones*, it was now granted to a wider group of magistrates and promagistrates both in Rome and in the provinces. The rights of Roman citizens were safeguarded by various provisions. In the first place it was only for the *crimina iudiciorum publicorum*, the offences defined by the statutes, that they could be tried; they were still protected by *provocatio* against the *coercitio* of magistrates. Secondly this right of capital jurisdiction over Roman citizens was conferred on a very select group of magistrates, and being a special grant could not, like the regular *imperium*, inherent in their office, be delegated by them to others; in fact the *legati* of proconsuls never exercised this special jurisdiction². Thirdly, it is at any rate possible that the magistrates to whom the jurisdiction was granted were required to try cases before some form of jury, the consuls using the senate as such, proconsuls specially constituted courts drawn from resident Romans of a certain age and census.

One object of the law is plain. Even under the late Republic, as has already been remarked, the concentration at Rome of capital jurisdiction over all Roman citizens throughout the empire must have given rise to great delays and difficulties in so far as the law was observed, and probably led to its being frequently overridden. By the time of Augustus the situation must have become unmanageable owing to the great extension of citizenship in the provinces. Provincial governors had no longer to deal merely with *negotiatores* and such other Romans as had on their own initiative domiciled themselves in the provinces, and with the few provincials who had received personal grants of citizenship. Many provinces now contained a considerable number of Roman colonies and *municipia* whose whole population were citizens. It must have become impracticable to remit every criminal charge to Rome. The *lex Iulia de vi publica* solved this problem by giving limited criminal jurisdiction to proconsuls, if not all provincial governors. If the grant was limited to proconsuls, this would not have been unreasonable on practical as well as on constitutional grounds. For it was in the public provinces — notably in Baetica, Africa, Narbonensis, Macedonia and Achaëa — that the great bulk of Roman colonies and *municipia* were to be found.

This was probably the main problem which the *lex Iulia* was designed to solve. Why then were the consuls and emperor included? Constitutional

¹ It is fairly obvious that there was no jury in the capital cases judged by Marius Priscus (Pliny, Ep. II. 11).

² Dig. I. xvi. 6 pr., 11, xxi. 1. § 1, Cassius Dio, LIII. 14.

propriety may have had some influence here. If proconsuls were being granted a special extension of their *imperium*, it might well have been felt that a similar extension could not be denied to the consuls and the emperor, whose *imperium* was superior to theirs.

But at the same time it may have been thought useful to supplement the *quaestiones* at Rome by two more dignified courts, the consuls in the senate and the emperor in council, which would be available to deal with cases of political importance or involving persons of high degree. Augustus may well have felt the need of a court over which he could preside, or in whose deliberations he could intervene, to deal with such cases. At the trial of Primus before a *quaestio* he had, it will be remembered, been placed in an embarrassing position¹.

There remains the problem of the change from *provocatio ad populum* to *appellatio ad Caesarem*. There was still ample scope for *provocatio* after the *lex Iulia de vi publica*, and the law envisaged its continued use. One of its clauses enjoined that no one should bind an accused person or prevent him from presenting himself at Rome within a fixed time². This rule implies that an accused who exercised *provocatio* was required to present himself at Rome for trial, but it leaves obscure what form this trial would take. *Provocatio* might be made if a magistrate who did not possess *exercitio iudicii publici* tried or attempted to try a citizen on a charge arising under the *leges iudiciorum publicorum*. It would seem natural that in such a case the accused should be sent for trial before the appropriate *quaestio* in Rome. No instances are known of such a case arising. *Provocatio* might also be employed against the *coercitio* of magistrates. The laws defined a limited number of crimes, and there were many other offences for which magistrates inflicted capital penalties in virtue of the general power of *coercitio* inherent in their *imperium*. *Peregrini* had no protection against this arbitrary jurisdiction, but Romans could exercise their right of *provocatio*.

Provocatio in the early and middle Republic gave rise to a *iudicium populi*, a trial before the *comitia centuriata*. After Sulla no such trials are recorded, save that of Rabinus, where an archaic procedure was revived for political effect, and in view of the richness of our information on this period, it is probably legitimate to deduce that they had fallen into desuetude. This may mean that offences not covered by the *leges iudiciorum publicorum* went unpunished, or that the right of *provocatio* was often ignored. Under the Principate we find that citizens are in fact protected against the *coercitio* of magistrates, but that they appeal to Caesar, as did Paul, or even if they do not appeal they are

¹ Cassius Dio, LIV. 3.

² Dig. XLVII. vi. 8, 'lege Iulia de vi publica cavetur ne quis reum vinciat, impediative quominus Romae intra certum tempus adsit'.

remitted to Rome for trial by the emperor, or alternatively the magistrate refers their case to the emperor for him to confirm or annul the sentence.¹

Here the emperor seems to have taken the place of the people as the ultimate arbiter of life and death. *Provocatio ad populum* has become *appellatio ad Caesarem*, and the emperor, instead of the people, decides whether to uphold the magistrate's sentence or not. This change again can hardly have come about without legislation. Among the honours stated by Dio to have been voted to Octavian after Actium was τήν τε ἐξουσίαν τῶν δημάρχων διὰ βίου ἔχειν καὶ τοῖς ἐπιβουμένοις αὐτὸν καὶ ἔντος τοῦ πωμηρίου καὶ ἔξω μέχρι ὁγδόου ἡμισταδίου ἀμύνειν . . . ἔκκλητόν τε δικάζειν καὶ ψῆφόν τινα αὐτοῦ ἐν πᾶσιν τοῖς δικαστηρίοις ὥσπερ Ἀθηνᾶς φέρεσθαι.² Octavian, according to Dio, accepted all the honours except a few. Among those which he rejected was fairly certainly the *tribunicia potestas*, which he did not acquire till 23 B.C.³ It does not, however, necessarily follow that he refused the special powers of *auxilium* and of jurisdiction which follow.

The first power described by Dio is that of giving *auxilium* in person like a tribune, but not only within the pomerium but for a zone of a mile outside it. The third is probably to be interpreted as the power of giving a vote of acquittal when the jury in a *quaestio* had condemned: ψῆφος Ἀθηνᾶς can hardly be taken in the strict sense of a casting vote when the jury was equally divided, as the right would then have been of nugatory value.⁴ This grant is something quite new, for no appeal had ever been allowed from the verdicts of the *quaestiones*, and the tribunes had never been able to intervene in their proceedings. It had however been foreshadowed by the proposal of Antony 'ut et de vi et maiestatis damnati ad populum provocent si velint'.⁵ Under Antony's law the people would have had the power of annulling a condemnation by a *quaestio* under two of the *leges*. In the law of 30 B.C. Octavian is given a general power of pardon in all cases under the criminal laws. Octavian, that is, as 'libertatis populi Romani vindex', to quote contemporary coinage, is not only given, in an extended form, the traditional power of the tribune to defend the liberty of the Roman citizen against the *imperium* of the magistrates, but is vested with the people's own prerogative of mercy, and that in cases where hitherto no appeal had lain to the people.

Whether Augustus accepted the first power, that of *auxilium*, we have no means of telling, for no emperor is recorded to have exercised it, though from

¹ See my article cited above p. 478, n. 6, pp. 920—I. The test cases are Acts, XXV, 9—12, Pliny Ep. X. 96. 4, Eusebius, HE V. 1.

² Cassius Dio, LI. 19.

³ See Last, 'On the tribunicia potestas of Augustus', Rend. Ist. Lomb. LXXXIV (1951), pp. 93—110.

⁴ The phrase seems to be used in one other passage only (Philostratus, Vit. Soph. 568) and there appears merely to mean a decisive favourable judgment.

⁵ Cic. Phil. I. 21.

23 B.C. all possessed it — at any rate within the pomerium. For the third power there is evidence under Tiberius, who, when Clutorius Priscus, having been condemned to death by the senate, was summarily executed without his being consulted, promoted a *senatusconsultum*, whereby ten days' grace should be allowed after sentence before the decree was entered in the *aerarium* for execution.¹ It appears to have later become the practice that all death sentences should be countersigned by the emperor: Nero, Suetonius tells us, 'cum de supplicio cuiusdam capite damnati ut ex more subscriberet admoneretur' replied: 'quam vellem nescire litteras'.² As the anecdote is dated to Nero's early years, when Tacitus records only three capital sentences passed by the senate, it would appear that condemnations by the *quaestiones* must have been regularly reviewed by the emperor. There is, it may be noted, no suggestion in our sources that the condemned man could appeal: the emperor intervened of his own motion.

It is in the light of these two powers that the third, briefly and obscurely described by Dio as ἐκκλητην δικάζειν, must be interpreted. In the context it must be a prerogative of mercy, a right to protect the liberty of the citizen against the *imperium*. It must be concerned with capital cases, and not be the ordinary right of giving *auxilium* in response to *appellatio* in civil issues which has been discussed earlier in this paper. The words strictly mean "to try an appealed (case)", *ex appellatione cognoscere*.³ But by Dio's time — and indeed a century earlier — the conceptions of *appellatio* and *provocatio* had become so blurred that the two words were used interchangeably,⁴ and here, I suggest, ἐκκλητην δικάζειν means *ex provocazione cognoscere*. Octavian, that is, was vested with the people's own prerogative of mercy, to reverse the capital sentence of a magistrate issued in virtue of his *imperium*. This second power is parallel to the third, and is prior to it: for by the second grant Octavian was vested with a right already held constitutionally by the people, in the third with an extension of this right.

¹ Tac. Ann. III. 51, Suet. Tib. 75, Cassius Dio, LVII. 20.

² Suet. Nero, 10. 2.

³ From Dio himself we have LII. 22, τὰς δίκας τὰς τε ἐκκλήτους καὶ τὰς ἀναπομπίμους (*ex appellatione* and *ex relatione*), LIX. 8, ὥστε μήτε ἐκκλητὸν ποτε ἀπ' αὐτοῦ δικάσαι, LXXVII. 8, ἐξ ἐκκλήτου δίκης κρινόμενον. Aelius Aristides (XXVI. 37. L. 74, ed. Keil) uses ἐκκλητος similarly. Ἐκκαλοῦμαι is the normal translation of appello, e. g. IG II—III². 1100, line 49 (under Hadrian), Riccobono, Fontes², III. 101 (A. D. 340). Ἐπικαλοῦμαι is also used for appello, e. g. Plutarch, Marcellus, 2, IG V. 21 (second century), and ἐπικλησις for appellatio (OGI 458, line 82, under Augustus).

⁴ Pliny (NH VI. 90) can say 'appellationem esse ad populum' and Tacitus (Ann. XIV. 28) 'qui a privatis iudicibus ad senatum provocavissent'. Examples are frequent in the Severan jurists as cited in the Digest. In Greek Dionysius of Halicarnassus (Ant. Rom. V. 19. 4, 70. 2, VII. 41. 1 as against IX. 39. 2) carefully distinguishes προκαλοῦμαι (*provoco*) from ἐπικαλοῦμαι (*appello*). Ἐπικαλοῦμαι is used for Paul's appeal to Caesar (Acts, XXV. 11—12).

The right of granting pardon necessarily involves the right of refusing it, and Octavian was thus in effect given the power of condemning a Roman citizen to death by refusing to exercise his prerogative. When the citizen had been condemned by the *iudicia publica*, he was no worse off if the emperor refused to exercise his prerogative, seeing that hitherto he had possessed no right of appeal. When he had been condemned by a magistrate exercising his *coercitio*, he theoretically lost his right of having his case reviewed by the *comitia centuriata*. But if, as has been suggested above, this procedure had fallen into desuetude, he lost little in practice, and in fact the rights of the Roman citizen seem to have been more effectively protected by the emperor than by the people.

The criminal jurisdiction of the emperor is thus in my opinion something new, created by two separate statutory grants. One, substituting the emperor for the people as the judge in cases arising out of *provocatio*, is dated to 30 B.C. The other, the *lex Iulia de vi publica*, cannot be securely dated. A *lex Iulia* may belong to Caesar or to Augustus. At first sight a plausible case can be made for Caesar. He was strongly interested, as his part in the trial of Rabirius and his intervention in the Catilinarian debate show, in the right of *provocatio*. At the same time his extensive grants of citizenship must have raised the problem of criminal jurisdiction over citizens in the provinces and suggested the need for some delegation of criminal jurisdiction to provincial governors. It may also be argued that as the *lex Iulia* spoke of *provocatio ad populum*, it was prior to the substitution of *appellatio ad Caesarem* for this right.

On the other hand there is no positive evidence for the capital jurisdiction of the senate or the emperor till late in Augustus's reign, and early in the reign we find political trials, such as would later have been held before the senate or emperor, going before an ordinary *quaestio*. In the case of Cornelius Gallus, the senate did not act as a court, but voted that he be condemned by a court,¹ that is presumably passed a vote of censure upon him and instructed the relevant praetor to receive a charge against him. Primus² and Caepio and Murena³ were also tried before the regular *quaestiones*. This would suggest that the *lex Iulia* was later than 23 B.C., and probably not earlier than 19 B.C. when Augustus returned to Rome. If a late date is accepted it must be presumed that the old phrase *provocatio ad populum* was used in the law from legal conservatism.

The argument for the later date is however by no means conclusive, for as the capital jurisdiction of the senate and the emperor was voluntary, it may have long lain dormant, though on the statute book, because no accuser took the initiative of invoking it. It is even possible that the *lex Iulia*, if due to Caesar, was intended only to give *exercitio iudicii publici* to proconsuls, but

¹ Cassius Dio, LIII. 23, cf. Suet. Aug. 66. 2.

² Cassius Dio, LIV. 3.

³ Cassius Dio, LIV. 3, Suet. Tib. 8.

was sufficiently loosely drafted to be interpreted to cover the consuls or anyone holding a consular *imperium*, and that Augustus made use of this ambiguity in the latter part of his reign, when his authority was well established, to set up his own and the senate's capital jurisdiction.

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PEREGRINA SACRA

Offizielle Kultübertragungen im alten Rom

Von den vielen fremden Göttern, mit denen die Römer infolge ihrer Eroberungen und der andauernden Erweiterung ihres Horizontes nacheinander in Berührung kamen, wurde nur ein Bruchteil in der Republik offiziell anerkannt¹. Dies geht schon aus einem Texte von Suetonius über Augustus hervor: *Peregrinarum caerimoniarum sicut veteres ac praeceptas reverentissime coluit, ita ceteras contemptui habuit*². Unter den aufgenommenen ausländischen Kulturen wurden von Augustus vor allem die Magna Mater und Ceres bevorzugt, berichtet Suetonius; hingegen legte der Kaiser für die nicht offiziell eingegliederten ägyptischen Götter, wie Apis, und für die jüdischen nur Abscheu an den Tag: so gratulierte er Gaius wegen seiner ablehnenden Haltung in Jerusalem.

Einschränkungen in der Aufnahme fremder Götter gehen auch aus der bekannten Definition von Festus hervor:³ „Fremde Kulte werden jene genannt, welche entweder nach der Evokation der Götter während der Belagerung der Städte nach Rom überführt oder um gewisser religiöser Gründe willen in Friedenszeiten geholt worden sind, wie die der Magna Mater aus Phrygia, der Ceres aus Griechenland, des Aesculapius aus Epidaurus: und diese (Kulte) werden nach der Weise jener ausgeübt, von denen sie übernommen worden sind.“ Es fällt sofort auf, daß *peregrina sacra* hier auf eine bestimmte, aber sehr beschränkte Kategorie fremder Götter hindeutet. Unter diesen unterscheidet Festus sehr genau zwei Gruppen (*aut . . . aut*). In der zweiten erwähnt er zwei von den Göttern, die im oben angegebenen Passus von Suetonius als offiziell angenommene fremde Götter genannt werden: Ceres und Cybele. Diese waren ja, nachdem von Staats wegen die sibyllinischen Bücher zu Rate gezogen

¹ Vgl. A. Bouché-Leclercq, *Manuel des Institutions romaines* (1931), 476 n. 1.

² Suet. Aug. 93.

³ Festus, 268 L.: *Peregrina sacra appellantur quae aut evocatis dis in oppugnandis urbibus Romam sunt conlata, aut quae ob quasdam religiones per pacem sunt petita, ut ex Phrygia Matris Magnae, ex Graecia Cereris, Epidauro Aesculapi: quae coluntur eorum more, a quibus sunt accepta.*

worden waren, aus ihrem fremden Heimatland nach Rom gebracht worden, wie es sich gleichfalls mit Aesculapius verhält¹. Auch in der ersten Gruppe der *peregrina sacra* von Festus handelt es sich um *publica sacra* des römischen Staates. Denn das *carmen evocationis* enthält das feierliche Gelübde, die feindliche Schutzgottheit nach der Evokation in Rom aufzunehmen und ihr dort einen neuen Tempel zu errichten². Die Evokation ist ein offizieller Kultusakt des römischen Staates, der zum *ius pontificum* gehört³.

Kurz, um die genaue Tragweite des Begriffs der *peregrina sacra* bei Festus festzustellen, muß man von der grundsätzlich zweigliedrigen Einteilung in *sacra publica* und *sacra privata* ausgehen: alle *sacra* waren entweder *publica* oder *privata*⁴. Die von Festus unter die *peregrina sacra* eingereihten ausländischen Kulte bilden also eine Unterabteilung dieser größeren Gruppe der *sacra publica*⁵. Da zu Festus' Zeit auch andere fremde Götter als diejenigen der beiden angegebenen Gruppen vom Staat anerkannt worden waren⁶, wird Festus' Definition auf eine viel ältere Quelle, höchstwahrscheinlich aus der augusteischen Zeit zurückgehen: nämlich auf das alphabetisch abgefaßte Werk *De verborum significatu* von Verrius Flaccus. Darauf deutet auch die Ähnlichkeit von Festus' Bestimmung mit der oben angeführten Stelle von Suetonius hinsichtlich der religiösen Politik des Augustus hin. Seine technische Definition wird Verrius Flaccus wohl an Hand der offiziellen sakralen Texte der Pontifices, aus denen er so oft geschöpft hat, in Worte gefaßt haben⁷. So ist denn die Notiz des Festus eine Quelle ersten Ranges für das Studium der offiziellen Kultübertragungen im alten Rom.

Nach welchen Kriterien hat nun Festus in der Kategorie der *peregrina sacra publica* zwei Gruppen unterschieden? In der Notiz liegt in erster Linie der Nachdruck auf den abweichenden Umständen, unter denen diese Götter nach Rom überführt worden sind: einerseits nach einer Evokation während des Krieges, andererseits aus gewissen religiösen Beweggründen in Friedenszeiten. Doch können diese Unterschiede allein nicht der Anlaß gewesen sein, der Festus' Gewährsmann (Verrius Flaccus) dazu gebracht hat, ursprünglich zwei Klassen zu bilden. Die Bezeichnung *per pacem* scheint Festus doch nur hinzugefügt zu haben als Gegensatz für die Anwendung der Evokation in Kriegszeiten: selbst dies steht z. B. für die Mater Magna in Widerspruch zu den Berichten der älteren Autoren. Danach hatte im Jahre 205 v. Chr., während des zweiten punischen

¹ Wissowa, *RuKdR*², 297, 318, 307.

² Macrob. *Sat.* III 9, 7—8.

³ Plin. *N. H.* XXVIII 4; Pernice, *Zum römischen Sakralrechte I*, S. Ber. Preuß. Akad. Wiss. Berlin 1885, 1156ff.

⁴ Vgl. Geiger, *RE.* I A, 1656 s. v. *sacra*.

⁵ Falsch ist Bolkesteins Behauptung: „... vreemde godsdiensten, die de Romeinen dus rekenden te behoren tot de *sacra privata*.“ *Med. Ned. Akad. Wet.* 1941, 3f.

⁶ Z. B. der Isiskult, vgl. Roeder *RE.* IX 2104.

⁷ Vgl. Rohde, *Die Kultsatzungen der römischen Pontifices*, *RGVV*, XXV (1936), 22; Westrup, *Introduction to Early Roman Law*, IV 1, 74 n. 1.

Krieges, die Befragung der sibyllinischen Bücher ergeben, daß die für Rom ungünstige Kriegslage sich wenden und der Feind unterliegen werde, wenn die Römer die Muttergottheit aus Phrygien nach Rom überführten¹. Der Grund, den Festus andererseits angibt für die Übertragung fremder Gottheiten in Friedenszeiten: *ob quasdam religiones*, gilt schließlich — und dies selbst an erster Stelle — ebenfalls für die Überführung der evozierten Götter. T. Livius erwähnt nämlich, daß Juno Regina nach der Evokation von Camillus in Rom aufgenommen worden ist um religiöser Traditionen willen².

Der zweigliedrige Unterschied in Festus' Notiz beruht deshalb nicht auf den verschiedenen Arten der Übernahme und den abweichenden Verhältnissen, sondern auf dem Unterschied in der Verehrungsweise dieser offiziell anerkannten fremden Kulte im Zusammenhang mit ihrem Herkunftsland³: „Die erste Gruppe umfaßt die Gottheiten der Rom benachbarten und meist auch stammverwandten Städte, deren Kult wegen der gleichen oder ähnlichen religiösen Grundanschauungen im wesentlichen derselbe wie der römische war, die zweite Kategorie sind außeritalische Gottheiten, die in einer von dem römisch-italischen Zeremoniell abweichenden Form — dies will der Zusatz *quae coluntur eorum more, a quibus sunt accepta*, besagen — verehrt wurden⁴.“

Obwohl sie also in Rom als Staatsgötter aufgenommen worden waren, blieben die evozierten Gottheiten dennoch klar getrennt von den anderen fremden Göttern, die z. B. aus ökonomischen Gründen ebenfalls offiziell anerkannt worden waren⁵: nur sie allein wurden, was Italien betrifft, als *peregrina sacra* von den eingenommenen feindlichen Städten eingegliedert. Die Kulte der Städte, die ohne Evokation erobert worden waren, blieben ja öfters an Ort und Stelle⁶ und wenn sie nach Rom überführt wurden, waren sie bisweilen nur Gegenstand eines Privatkultes⁷. Unrichtig ist jedoch die Behauptung Böttichers, aus der Übernahme des Bildes des Jupiter Imperator aus Praeneste gehe hervor, daß nicht für jede evozierte Gottheit in Rom ein Tempel gegründet und ein Kult eingerichtet worden sei⁸. In dem Passus, durch den Bötticher seine Auffassung belegen will, sagt T. Livius ausdrücklich, daß Praeneste nicht infolge einer Erstürmung eingenommen worden ist, sondern nach einer freiwilligen Übergabe, so daß man in diesem Falle nicht dazu genötigt war, die feindliche Schutzgottheit zu evozieren⁹. Das Bild des Jupiter ist nicht ritusgemäß nach Rom überführt worden, sondern wurde nur zur Ausschmückung des Triumphzuges des T. Quintius durch die Stadt geführt und nachher als

¹ Liv. XXIX, 10, 5.

² Liv. V 52, 10.

³ Vgl. Wissowa, 45.

⁴ Geiger, RE. 1A, 1664.

⁵ Vgl. Merlin, L'Aventin dans l'antiquité, 140 ff.

⁶ Vgl. Bouché-Leclercq, Pontifices, Daremberg IV 1, 573.

⁷ Arnob. III 38: Cincius pronunciat solere Romanos religiones urbium superatarum partim privatim per familias spargere, partim publice consecrare.

⁸ K. Bötticher, Die Tektonik der Hellenen (1852), 2. Band, 119 n. 45.

⁹ Liv. VI 29, 7—9.

Weihgeschenk im kapitolinischen Heiligtum untergebracht, was im Gegensatz steht zu dem im *carmen evocationis* erwähnten Benehmen.

Obgleich es deshalb sicher ist, daß die evozierten Götter offiziell nach Rom überführt wurden und sie dort einen Tempel erhielten, ist im Texte des Festus nicht ganz klar angegeben, auf welche Weise sie in Rom verehrt wurden. Die Mitteilung, daß die fremden Gottheiten wie Cybele, Ceres und Aesculapius in Rom den Kult ihres Herkunftsortes beibehielten, wird auch von andern alten Autoren bestätigt. Valerius Maximus berichtet, daß die Römer eine Cerespriesterin aus Elea kommen ließen, obgleich diese Stadt damals noch keine *civitas foederata* war, um die Göttin gemäß den ursprünglichen griechischen Riten zu verehren¹. Cicero betont nachdrücklich, die Eigenart des Cereskultes liege nicht nur in der Tatsache, daß er von Griechenland herübergebracht worden sei, sondern auch darin, daß er obendrein von griechischen Priesterinnen ausgeübt werde². Auch beim Aesculapiuskultus trug man Sorge dafür, die ursprüngliche Verehrungsweise zu übernehmen³. Phrygische Priester, die mit Cybele mit nach Rom gekommen waren, verehrten die Göttin dort nach phrygischer Art⁴. Daneben hatten die Römer jedoch von der Ankunft der Göttin an auch einen rein römischen Kult für sie eingerichtet. Der eigentlich phrygische Kultus wurde soweit wie möglich isoliert und unter religionspolizeiliche Aufsicht gestellt. „Jedem Bürger wurde verboten, in den Klerus der ausländischen Göttin einzutreten oder an ihren heiligen Orgien teilzunehmen. Die barbarischen Riten, mit denen die Große Mutter verehrt werden wollte, wurden von phrygischen Priestern und phrygischen Priesterinnen vollzogen. Die ihr zu Ehren vom ganzen Volke gefeierten Feste, die *Megalensia*, hatten nichts Orientalisches an sich und wurden den römischen Traditionen gemäß gestaltet⁵.“ „So stellt sich der römische Staatskult der Magna Mater als ein Gebilde von ausgeprägter Eigenart dar; fremder Inhalt und römische Form sind zur Einheit verschmolzen⁶.“ Ähnlich war das Benehmen der Römer der zweiten kleinasiatischen Gottheit, Mâ, gegenüber, die sich seit dem Ende der Republik in Rom angesiedelt hatte. „Ihre Riten waren noch blutiger und wilder als die von Pessinus, und sie hatte einen kriegesischen Charakter gewonnen oder bewahrt, der sie der italienischen Bellona näherte⁷.“ Ebenso wie dies bei Cybele der Fall war, wurde ihr Gottesdienst in Rom unter die *publica sacra* aufgenommen: dies wird ausdrücklich von Lactantius bestätigt⁸, während auch die archäologischen Angaben auf eine enge Verbindung zwischen der

¹ Val. Max. I 1, 1.

² Cic. pro Balbo, 55.

³ Val. Max. I 8, 2.

⁴ Liv. XXIX 14, 10; Dion. Halik. II 19.

⁵ Fr. Cumont, Die orientalischen Religionen im römischen Heidentum, 1931³, 48—49.

⁶ Altheim, Röm. Religionsgesch. II (1953), 52.

⁷ Cumont, 50.

⁸ Lact. Inst. I 21, 16—17: Ab isto genere sacrorum non minoris insaniae iudicanda sunt publica illa sacra, quorum alia sunt Matris ... alia Virtutis, quam eandem Bellonam vocant ...; keinen Grund sehe ich für die Behauptung Wissowas, Rel. u. Kultus, 349 n. 5.

Magna Mater und der Mâ-Bellona hindeuten¹. Dies alles trug sich jedoch auf solche Weise zu, daß man ihr abscheuerregendes Zeremoniell und ihre Priester, die *fanatici*, soviel wie möglich auszuschalten versuchte und daß die kappadokische Göttin mit der alten italischen Bellona identifiziert wurde².

Da das Beispiel des doppelten Kultes der Magna Mater darauf hinweist, daß die Mitteilung des Festus nicht ganz der Wirklichkeit entspricht, wird das Problem des Kultes der durch Evokation offiziell nach Rom überführten Gottheiten noch komplizierter. Denn es ist nicht ohne weiteres klar, ob der Gegensatz in der Verehrungsweise der beiden Kategorien von *sacra peregrina* sich beschränkt auf den ursprünglich italischen oder nicht italischen Kultus jener Götter, oder ob er überdies noch einen Unterschied umfaßt, der die Bewahrung des eignen Rituals betrifft. Im letzteren Fall könnten dann die eigentliche Gestalt und Funktion der Schutzgötter eine Änderung erfahren haben. Der ältere Plinius³ bestätigt nämlich, daß die Römer bei der Evokation der feindlichen Schutzgottheit einen gleichen oder einen größeren Kultus in Rom versprachen. Im *carmen evocationis*⁴, auf das Plinius hindeutet, bittet der Römer die Schutzgottheit der belagerten Stadt, auf ihren ursprünglichen Kultus zu verzichten und an dessen Stelle einem Gottesdienst der Römer den Vorzug zu geben. Das *carmen* setzt jedoch keinesfalls das Gelübde voraus, den ursprünglichen Kultus auf ganz identische Weise in Rom fortzusetzen, so daß die bisherigen Riten und selbst die Gestalt der Gottheit eventuell abgeändert werden konnten.

Diese Angaben in Bezug auf das Prinzip werden durch eine eingehendere Untersuchung der Kulte der evozierten Gottheiten Juno Regina von Veii und Vortumnus von Volsinii bestätigt. Von der Schutzgottheit von Veii behaupteten Marquardt und Merlin, daß die Göttin bei ihrer Überführung nach Rom von ihren eigenen, zu einer bestimmten etruskischen Gens gehörenden Priestern begleitet gewesen sei⁵. Diese Feststellung geht jedoch über den Sinn des dabei angeführten Passus von T. Livius hinaus⁶. Dieser Text weist im Gegenteil darauf hin, daß die Römer gerade nicht die ursprünglichen etruskischen Kultusvorschriften eingehalten haben. Kein einziger Autor übrigens, sogar Livius nicht in seinem ausführlichen Bericht, erwähnt die Tatsache, daß auch das Tempelpersonal von Veii aus nach Rom übersiedelte, was wohl der Fall war bei der Magna Mater. Durch ihre Ansiedlung auf dem Aventin in Rom verlor Juno Regina von Veii notwendigerweise sofort den ihr eigenen Charakter einer etruskischen Stadtgottheit. Während des zweiten punischen Krieges sind

¹ C. Calza, Il santuario della Magna Mater a Ostia, Mem. Pont. Accad. Rom. Arch. vol. VI 201 f.

² Grenier, Les religions étrusque et rom. (Mana II 3), 143; Bouché-Leclercq, Manuel Inst. rom., 492.

³ Plin. N. H. XXVIII 4.

⁴ Macrob. Sat. III 9, 7—8.

⁵ Merlin, 240; Marquardt, Le culte des Romains II, 101.

⁶ Liv. V 22, 5.

für sie verschiedene religiöse Feierlichkeiten eingerichtet worden, die öfters mit großem Pomp verbunden waren, wobei jedoch der griechische Einfluß vorwiegend war. Diese zur Aussöhnung der Götter abgehaltenen Zeremonien, anlässlich der mannigfachen und befremdenden Prodigien auf Anraten der *decemviri* oder infolge einer von den *haruspices* gegebenen Antwort, weisen gleichwohl auf nichts mehr hin als auf die verhältnismäßige Bedeutung der aventinischen Juno in jenem unruhigen Zeitabschnitt der aufgepeitschten Religiosität. Nach diesen außerordentlichen Jahren trat Juno in den Hintergrund, und in der Kaiserzeit sieht es so aus, als ob die ehemalige etruskische Stadtgottheit von Veii fast völlig vergessen sei¹.

Noch deutlicher läßt sich eine ähnliche Entwicklung nachweisen bei Vortumnus, der Schutzgottheit von Volsinii, die nach einer Evokation in 264 v. Chr. nach Rom überführt worden sein soll², als M. Fulvius Flaccus den Sieg errang *de Vulsiniensibus*³. Propertius läßt den Gott ja selbst ausdrücklich erklären, daß er eigentlich die Schutzgottheit der etruskischen Stadt Volsinii war und, als der Kampf noch tobte, auf die Seite der Römer übertreten wollte⁴:

Tuscus ego, Tuscis orior: nec paenitet inter
proelia Volsinios deseruisse focos.

Obschon er früher einer der mächtigsten Götter von Etrurien gewesen sein soll (*deus Etruriae princeps*, berichtet Varro), verlor er nach seiner Ansiedlung auf dem Aventin⁵ die wichtige ursprüngliche Funktion und Gestalt. In Rom war er der Gott der Wandel der Jahreszeiten geworden, dem die Erstlinge der Obst- und Getreidefrüchte angeboten wurden, aber er erinnerte sich, daß er früher ein großer Kriegsgott gewesen war⁶:

Arma tuli quondam et, memini, laudabar in illis.

Deshalb sind die Behauptungen früherer Forscher, wie Bouché-Leclercq⁷ und Bötticher, unrichtig: „Nahm man ihren Kult auf und verleibte ihn den Staatskulten als ein *peregrinum sacrum* ein, so wurden natürlich auch alle seine Gebräuche nebst den ihm ursprünglichen Festspielen heimisch gemacht, wobei es ganz gleich ist, ob die *sacra* auf friedlichem Wege durch Übereinkunft oder gewalttätig durch *evocatio* gewonnen waren⁸.“ Die Art, in der Juno Regina und Vortumnus in Rom verehrt wurden, weist darauf hin, daß die Römer — gemäß der Freiheit im Verfahren, die sie sich beim Gelübde des *carmen evo-*

¹ Merlin, 201; 368 ff.

² Vgl. L. Ross Taylor, *Local Cults in Etruria*, 152; Grenier, 45.

³ CIL I², 172; Wissowa 287 f.

⁴ Prop. IV 2, 3 f.

⁵ Varro L. L. V 46; Platner-Ashby, *Topogr. Dict.* 584.

⁶ Prop. IV 2, 27; vgl. Grenier, 45. Auf seine Verwandlungen deutet Vortumnus hin mit den Worten: *Quid mirare meas tot in uno corpore formas?*

⁷ Bouché-Leclercq, *Les Pontifes de l'ancienne Rome* (1871), 165.

⁸ Bötticher, 146.

cationis vorbehalten hatten — die ursprüngliche Bedeutung und den ursprünglichen Kultus der evozierten Götter bei ihrer offiziellen Annahme in Rom nicht innezuhalten brauchten. Die Römer haben diesen Göttern, verglichen mit ihrer Funktion im Herkunftsland, vielmehr eine unbedeutende Rolle zuerkannt¹. Im Gegensatz hierzu stehen die fremden Götter der zweiten Kategorie, wie Aesculapius, Ceres und die Magna Mater, die noch nach der alten Art weiterverehrt wurden, da ihre ursprüngliche Natur und Funktion dem Ziel entsprachen, das die römische Religionspolitik sich bei ihrer Überbringung gesteckt hatte, oder zum mindesten nicht ganz unvereinbar damit waren. Der Doppelkultus der Cybele liefert den Beweis dafür, daß die Römer nicht gezögert haben, den Originalkultus zu unterdrücken und neben ihm einen rein römischen Gottesdienst einzurichten, wenn bestimmte Charakterzüge des fremden Kultes nicht mit den Auffassungen der führenden Kreise übereinstimmten.

Oft wird im griechischen und römischen Altertum kein genauer Unterschied gemacht zwischen der Gottheit und ihrem Bild: so wurden die Götterbilder von den Autoren bisweilen in Bewegung, handelnd und sprechend vorgestellt². Schon in der Ilias bewegt das Bild der Athena das Haupt als Zeichen der Verweigerung. Das Artemisbild hatte sich selbst umgedreht und die Augen zugemacht. Das Bildnis der Vesta deckte mit beiden Händen die Augen zu, und das Apollobild weinte drei Tage lang³. Man richtet Fragen an das Bild, wie an die Gottheit selber: Lolliia wurde verklagt, weil sie das Bild des Apollo über Kaiser Claudius' zukünftige Heirat befragt hatte⁴. Daß die Gottheit eine Antwort gibt, ist bei den antiken Autoren keine Seltenheit: der Überlieferung nach soll der Apollo von Delphi den römischen Gesandten geantwortet haben, daß, wenn sie den Aesculapius nach Rom einführen würden, die furchtbare Pest in Latium aufhören werde⁵. Auch im Hinblick auf eine geplante Versetzung konnte die Gottheit oder deren Bild ihre Zustimmung oder Ablehnung durch deutlich wahrnehmbare Handlungen, Gebärden oder selbst Worte bekanntgeben. Suetonius erzählt, daß die Zeusstatue in Olympia in ein gewaltiges Gelächter ausbrach und die Arbeiter in Furcht versetzte, um dadurch ihre von Caligula angeordnete Überführung nach Rom zu verhindern⁶.

Die Römer waren nun der vorgefaßten Meinung, daß sie alle Völker an Glaubenseifer überträfen und sie deshalb zur Belohnung von den Göttern die Universalherrschaft erhalten hätten⁷. Bei der Einnahme der feindlichen heiligen

¹ Vgl. J. B. Carter, *Die Etrusker und die römische Religion*, Röm. Mitt. 1910, 74.

² Vgl. Radermacher, *Aus Lucians Lügenfreund*, Festschr. f. Gomperz, 200ff.; RE. Suppl. V 474.

³ Il. Z 311; Eur. Iph. Taur. 1165ff.; Ovid Fast. III 46; Cass. Dio fr. 84, 2.

⁴ Tac. Ann. XII 22.

⁵ Ovid. Met. XV 635f.

⁶ Suet. Calig. 57.

⁷ Polyb. VI 56; Cic. Har. Resp. 9, 19. de Nat. Deor. 2, 3, 8, 3, 2, 5; Val. Max. I 8.

etruskischen Städte haben die Römer jedenfalls in solchem Maße religiöse Skrupel gehabt, daß sie nicht zur entscheidenden Erstürmung der Stadtwälle übergingen, ohne vorher die Schutzgottheit durch den Ritual der Evokation wegzurufen. Der tiefere Grund dieser sakralen Handlung war unzweifelhaft das Vermeiden eines Sakrilegs, wie es auch die Alten gedeutet haben¹. Aber nächst diesem eigentlich religiösen Motiv waren auch noch andere Beweggründe für die Anwendung der Evokation in Kriegszeiten da. „Zugleich aber hat die Evokation auch ihren politisch-militärischen Sinn: durch sie wurde dem Heere völlige Gewißheit über den Erfolg gegeben. Durch die Evokation wird der unzerstörbare Kern des feindlichen Staates, der Keim, aus dem er jederzeit neu erstehen kann — wie Rom aus den von Aeneas geretteten troischen Penaten — erst eigentlich erobert und zur Erhöhung der eigenen Macht erworben².“ Doch nicht nur die Tempelerrichtung für die evozierten Götter hat einen politischen Zweck: auch bei der Übertragung der *peregrina sacra* der andern von Festus angeführten Kategorie haben politische Absichten die Hauptrolle gespielt. Moderne Forscher erwähnen z. B. für die Übertragung der Cybele mit Recht als wirkliche Beweggründe u. a. den Wettstreit zwischen den Patriziern einerseits und den Plebejern mit ihren Ceres- und Florafesten andererseits, die Politik der führenden Geschlechter im Zusammenhang mit ihrer troischen Abstammung, die ausländische Politik Roms, die schon auf weiter entfernte Gebiete hinielte³.

Um ihre wirkliche imperialistische Politik bei den offiziellen Kultusübertragungen fremder Götter zu verheimlichen, fanden die Römer in den oben erwähnten Vorstellungen der sprechenden oder gebärdemachenden Götterbilder ein besonders geeignetes Mittel. So ist hauptsächlich in der augusteischen Literatur und auch in den öffentlichen Schauspielaufführungen⁴ die Vorstellung propagiert worden, daß diese Götter ihre Überführung selbst gewollt, ja die Römer selber darum gebeten hätten.

Als König Attalos der von Staats wegen mit der Übertragung des Cybelebildes beauftragten römischen Gesandtschaft das Bild nicht abtreten will, erklärt diese Gottheit selbst, daß es auch ihr Wille ist, nach Rom überführt zu werden. „Da tritt heftiges Erdbeben ein, es ertönt unterirdisches Grollen und aus dem Tempel hört man die Stimme der Göttin: „Mein Wille war es, daß sie mich holen; halte mich nicht länger, entlasse mich, wie ich es will! Rom ist es wert, aller Götter Wohnung zu sein⁵.“ Ähnlich, wie bei der Übertragung der

¹ Rohde, Die Bedeutung der Tempelgründungen im Staatsleben der Römer, 8f.; Servius Aen. II 351.

² Rohde, 9f.

³ Lambrechts, Cybèle, divinité étrangère ou nationale?, Bullet. Soc. royale belge Anthropol. et Préhist. 1951, 44ff. (mit Lit.).

⁴ Ovid Fast. IV 326; T. Liv. V 21, 8.

⁵ Schmidt, Kultübertragungen, RGVV VIII. Band 2. H. (1910) 5; Ovid. Fast. IV 268ff.

Göttermutter, hat auch Aesculapius erklärt, nach Rom übersiedeln zu wollen, als die Epidaurier auf die Bitte der römischen Gesandten anfangs nicht eingingen. „In der Nacht erscheint einem der Römer Asklepios selbst im Traum, *qualis in aede esse solet*, den schlangenumwundenen Stab in der Linken und mit der Rechten den Bart streichend, und verkündet ihm, daß er ihnen nach Rom folgen wolle: er werde sich in die Schlange an seinem Stab verwandeln, nur werde er gewaltig groß erscheinen, wie es einem Gotte gezieme. Und so geschieht es am anderen Tag, als sie zum Tempel kommen, den Gott um ein Zeichen zu bitten, welcher Wohnsitz ihm der liebste sei. Unter dem Beben der Erde fährt der Gott in die Schlange, und ehrfurchtsvoll von den Anwesenden begrüßt, verläßt das ungeheure Tier das Bild und begibt sich auf blumenbestreutem Wege mitten durch die Stadt zum Hafen und auf das römische Schiff¹.“

Nach der Zerstörung Veis erhielten nach der Erzählung bei T. Livius ausgewählte Jünglinge des römischen Heeres den Auftrag, das Bild der von Camillus evozierten Juno Regina nach Rom überzuführen. Als sie nach einer vorherigen Reinigung in weißen Gewändern in den Tempel hineingetreten waren, soll nach einer bestimmten Überlieferung, also Livius, einer dieser Jünglinge, entweder unter göttlicher Eingebung, oder aus Spaß, die Göttin gefragt haben, ob sie nach Rom übersiedeln wolle, und die Göttin soll ja genickt oder selbst gesagt haben². Über dasselbe Ereignis erzählt Plutarch in einer abweichenden Fassung, daß Camillus nach der Zerstörung der Stadt infolge eines Gelübdes beschloß, das Bild nach Rom überführen zu lassen. Daraufhin brachte er ein Opfer und bat die Göttin, der Einladung Folge zu leisten und den römischen Schutzgöttern eine gewogene Gefährtin zu sein: das Bild soll dann nach der Überlieferung mit zarter Stimme gesagt haben, daß es wolle und einverstanden sei³. Auch für Juno Curritis, die Gottheit der etruskischen Stadt Falerii, die gleichfalls durch Evokation nach Rom überführt worden sein soll⁴, hat die augusteische Propaganda eine ähnliche Version ersonnen. Ovidius läßt in seinen Fasten Juno selbst ausdrücklich erklären, daß sie keineswegs bedauert, die sie verehrenden Falisker unter das römische Joch fallen lassen zu haben, denn kein Volk sei ihr lieber als das römische. In Rom möchte sie verehrt werden⁵. Mit demselben von Ovid in seinen Fasten benutzten Kunstgriff legt Properz der Statue des Vortumnus folgende Erklärung in den Mund: „Es reut mich nicht, mitten im Kampfe meine Heimat Volsinii verlassen zu haben: diese Menschenmenge freut mich; ich verfüge nicht mehr über einen Tempel, in dem Elfenbein verwendet war: das römische Forum überblicken zu können, genügt mir⁶.“ Properz hat die fast vergessene etruskische Herkunft und Gestalt des Vortumnus nur um der augusteischen Propaganda willen wieder ins Gedächtnis

¹ Schmidt 31 f.

² Liv. V 23, 5.

³ Plut. Cam. 7.

⁴ Wissowa, 188; Basanoff, *Evocatio, Etude d'un rituel militaire romain* (1947), 52 ff.

⁵ Ovid. Fast. VI 49—51.

⁶ Prop. IV 2, 3 ff.

zurückgerufen: als Gottheit, die Rom freiwillig der eigenen Stadt vorzog, hat auch er das Seinige zur Größe des Imperiums und zur Erhaltung der Pax romana beigesteuert¹. Denn, „die auf Grund der Evokation erfolgte Tempelgründung legitimiert den römischen Sieg ...“²

So bilden die neuen Tempel dieser fremden Götter bleibende und für jeden wahrnehmbare Merkmale der glorreichen Kriegstaten und der ruhmvollen historischen Ereignisse der nationalen Vergangenheit³. Ähnlich, wie die andern offiziell überführten ausländischen Götter, etwa Aesculapius und Cybele, haben ja auch die evozierten Gottheiten aus freiem Willen ihre Kraft für das Wohl des römischen Reiches eingesetzt.

Gent

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¹ P. Grimal, Les intentions de Propertius et la composition du livre IV des Elégies, Latomus 1952, 320.

² Rohde, Tempelgründungen, 10.

³ Altheim, Röm. Rel. I 110

BERICHTIGUNG

Zur Meuterei von Opis

In meinem Aufsatz „Die Meuterei von Opis“ im II. Band dieser Zeitschrift (1954, 418 ff.) habe ich außer Arrian auch Curtius herangezogen. Dabei ist mir, worauf mich Konrad Müller in Bern hinweist, ein bedauerliches Versehen unterlaufen, das ich richtigstellen muß: Die von mir angeführten Worte „*Hac oratione habita* usw.“ (S. 424) und „*unum ex iis auctoritate et aetate gravem*“ (S. 425) sowie der S. 425 abgedruckte Bericht über das Versöhnungsfest (*digna tamen res visa est* usw.) stammen nicht von Curtius, sondern aus den Supplementa des Johann Freinsheim. Infolgedessen läßt sich der Anklang der Worte *unum ex iis auctoritate et aetate gravem* an die Charakterisierung des Kallinas bei Arrian καθ' ἡλικίαν ... οὐκ ἀφανής nicht als Stütze dafür verwerten, daß Curtius die Kallinaszene durch das Gespräch Alexanders mit einem der Meuterer variierte, wenn diese Möglichkeit dadurch auch keineswegs ausgeschlossen wird. Zweitens wird meine Ansicht, daß der Bericht über das Versöhnungsfest auf die λόγος-Quelle Arrians zurückgehe, für die quellenkritische Beurteilung des Curtius bedeutungslos, weil eben Johann Freinsheim diesen Bericht zusammengestellt hat.

München

FRITZ WÜST

REZENSION

H. Lyngby, Beiträge zur Topographie des Forum-Boarium-Gebietes in Rom, Acta Instituti Romani Regni Sueciae, Series in 8^o, VII, 1954 (Lund, CWK Gleerup, XXVI + 167 S., 2 Taf.).

Die Bau- und Stadtgeschichte des antiken Rom bietet trotz einer Jahrhunderte währenden Forschungsarbeit noch viele ungelöste Probleme; neben den einheimischen Meistern der römischen Topographie von G.B. de Rossi bis zu R. Lanciani und G. Lugli haben seit langem die Gelehrten der ausländischen Institute in Rom an der Aufhellung dieser Fragen mitgearbeitet — es sei nur an die Namen Chr. Hülsen oder Th. Ashby erinnert. Als die Kriegsverhältnisse die Tätigkeit der meisten fremden Schulen unterbrachen oder hemmten, hat das Schwedische Institut unter der erfahrenen Leitung von E. Sjöquist, E. Gjerstad und A. Boëthius diese schöne Tradition erfolgreich fortgesetzt. Ein Ergebnis solcher Bemühungen sind die vorliegenden Untersuchungen von H. Lyngby. Sie greifen zwei der wichtigsten und lange umstrittenen Probleme in der Topographie des Forum Boarium wieder auf: Zahl und Lokalisierung der Herkulesheiligtümer (S. 1–62) und Verlauf der republikanischen Stadtmauer in diesem Gebiet (S. 63–135). Da das Forum Boarium bis heute noch nicht systematisch ausgegraben ist, fehlt hier in den meisten Fällen eine interne archäologische Evidenz; die Deutung der vorhandenen Reste ist häufig nur von der antiken Literatur aus möglich. L. geht methodisch richtig von einer erneuten Überprüfung dieser literarischen Zeugnisse aus. Alle einschlägigen Testimonien werden philologisch einwandfrei im Wortlaut vorgelegt und unter kritischer Verwertung der umfangreichen Streitliteratur eingehend interpretiert; dieser Wechsel von Textvorlagen, Kommentar und topographischen, historischen und religionsgeschichtlichen Exkursen macht das Buch nicht immer leicht lesbar, ist aber wohl kaum zu umgehen. Dagegen würde man in einer solchen topographischen Arbeit ein reicheres Kartenmaterial wünschen; die fünf Skizzen sind im Maßstab zu klein und haben gegenüber den benutzten Vorlagen an Deutlichkeit eingebüßt¹.

Lyngby gelangt in beiden Fragen zu neuen, teilweise von der bisherigen Auffassung stark abweichenden Lösungen. Zunächst das Problem der Herkulesheiligtümer. Jordan-Hülsen (I, 2, 479 ff.; I, 3, 145 f.), Richter 187 ff.), Platner-Ashby (253 ff.) und Lugli (Roma antica 574 ff.; 587 f.) nahmen trotz bestimmter Differenzen in Einzelfragen grundsätzlich vier solcher Kultstätten im Gebiet des Forum Boarium an: die Ara Maxima, den Rundtempel des Hercules Victor (oder Invictus), den Tempel des Hercules Pompeianus am Circus Maximus und ein Heiligtum des Hercules Invictus bei Porta Trigemina. L. sucht dagegen sieben Heiligtümer nachzuweisen: Ara Maxima, Tempel des Hercules Invictus (oder Pompeianus) am Circus Maximus, eine aedes Herculis in foro Boario, Tempel des Hercules Victor und Rundtempel des Hercules auf dem Forum Boarium (identifiziert mit dem sog. Vestatempel) und schließlich je ein Heiligtum des Hercules Invictus und Hercules Victor an der Porta Trigemina. Dieses in sehr detaillierten Einzeluntersuchungen gewonnene Ergebnis stützt sich besonders auf zwei prinzipielle Überlegungen. Einmal bezieht L. die antiken Angaben „in foro Boario“ und „ad Circum Maximum“ grundsätzlich

¹ Vgl. Fig. 2 und 3 mit Röm. Mitt. 46 (1931) 157 und 179; Fig. 76 mit G. Lugli, Roma antica 1946, Taf. IX.

auf zwei verschiedene Heiligtümer. Doch läßt sich nicht eindeutig nachweisen, daß diese Ausdrücke tatsächlich zwei verschiedene Lokalitäten bezeichnen müssen; vielmehr gehört nach den antiken Nachrichten die Gegend ad circum Maximum üblicherweise zum Forum Boarium¹, so daß beide Ortsangaben im Austausch für dasselbe Monument stehen können. Zum anderen bezeichnen nach L. die Ausdrücke Hercules Victor bzw. Hercules Invictus ebenfalls jeweils verschiedene Kultstätten. Nun ist zwar die Herausarbeitung zweier verschiedener Kulttypen des Hercules Victor bzw. Invictus zweifellos richtig, aber es bleibt wiederum unsicher, ob in der Terminologie der (meist sehr späten) antiken Testimonien beide Typen immer sauber unterschieden werden. Es läßt sich daher fragen, ob eine derartig scharf zupackende sprachliche Interpretation in allen Fällen zu solch einschneidenden Korrekturen an der bisherigen Forschung berechtigt².

Auch bei der Frage des Stadtmauerverlaufs, den L. wesentlich durch die Lokalisierung verschiedener Tore zu bestimmen sucht, lassen sich manchmal ähnliche methodische Bedenken nicht ganz unterdrücken. Der von L. unter Heranziehung einiger selten beachteter Testimonia neu gestützte Ansatz von Porta Carmentalis in einem nördlichen Mauer-schenkel zwischen Kapitol und Tiber, von Porta Trigemina in einem südlichen zwischen Aventin und Fluß hat manches für sich, zumal sich die Aufdeckung des Fortuna- und des Mater Matutinatempels (die nach klarem antikem Zeugnis innerhalb der Mauern lagen) am Westende des Vicus Iugarius schlecht mit der von v. Gerkan und Säflund vertretenen „Ringmauertheorie“ vereinen läßt (der zufolge die Mauer vom Kapitol durch das Circustal zum Aventin lief und das ebene Gebiet am Tiberufer nicht einschloß)³. Dagegen ist die mit der Interpretation einiger Liviusstellen begründete Verlegung der Porta Flumentana in eine später aufgelassene Schenkelmauer südwestlich vom Aventin nicht völlig überzeugend, zumal ein solcher Mauertrakt bisher weder archäologisch noch literarisch bezeugt ist; ebenso dürfte die Deutung der Porta Triumphalis auf den „monumentalen Mittelbogen der Porta Carmentalis“ manchen Widerspruch finden.

L.s Buch verrät langjährige Vertrautheit mit den Problemen und gibt einen wertvollen Beitrag zur römischen Topographie. Auch wer sich nach eingehender Prüfung der Argumente nicht mit allen seinen Lösungsvorschlägen einverstanden erklären kann, wird diese handliche Zusammenfassung der Quellen (auch die Renaissancetestimonien sind besprochen und in einem Anhang wiedergegeben) begrüßen und anerkennen, daß viele der angeschnittenen Fragen eine neue Erörterung verdienen, wobei dann eine Auseinandersetzung mit L.s Ergebnissen nicht zu umgehen sein wird.

Tübingen

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¹ Vgl. Jordan-Hülens I, 2, 474 ff.; Richter 184; Platner-Ashby 223; Lugli 576.

² Zumal sich L.s Theorie (abgesehen von der nicht sehr wahrscheinlichen Häufung von Heiligtümern auf engem Raum) nicht besser als die seiner Vorgänger mit den vorhandenen antiken Resten vereinbaren läßt.

³ Allerdings weisen v. Gerkan und Säflund mit Recht auf einige der Mauer-schenkeltheorie widersprechende Ergebnisse der Bodenforschung hin; am wahrscheinlichsten bleibt daher eine (von Lugli 560 angedeutete) Kombination beider Theorien.

ZEITSCHRIFTENREFERATE

Vestnik Drevnej Istorii

(Fortsetzung von HISTORIA III/3, 1954, S. 380/82)¹

1954, Heft II: S. 9/18 R. F. Its: Social'no-ëkonomičeskie otnošenija v Kitae v period dinastii Iú (*Die sozial-ökonomischen Verhältnisse in China z. Zt. der Dynastie Yin, 14./12. Jh. v. Chr.*) (T. V. Stepugina hatte in VDI 1950/II, S. 57/76 [vgl. HISTORIA II/1, S. 118 Mitte] diese Periode als „Zeit einer primitiven, verfallenden Barbaren-Gesellschaft angesehen, die als Stadium der ‚Militär-Demokratie‘ betrachtet werden“ darf. Gegen diese Auffassung hatte Eduard Erkes in Leipzig Einspruch erhoben. Its glaubt gegen Stepugina, von einer „sklavenhaltenden Gesellschaft“ sprechen zu können, betrachtet aber die Erörterung als noch nicht abgeschlossen)². — 19/27 I. S. Katznelson: O značenii drevne-egipetskogo termina *Meret* (*Zur Bedeutung des alt-ägypt. Ausdrucks Meret*). (Berücksichtigt von E. V. Čerezov und I. M. Lur'e in VDI 1951/II, S. 40/46, bzw. IV, S. 76/82 [vgl. HISTORIA II, 1953, S. 124 Mitte bzw. 369 oben] übersehene Texte. Der Vf. trennt — entsprechend dem „Ägyptischen Wörterbuch“ — die Wurzeln *mrw* und *mrt* und hält damit gegen Lur'e: Čerezovs Deutung für im wesentlichen richtig). — 28/46 V. N. Jarcho: Social'naja pozicija attičeskogo krest'janstva v otaženii fragmentov drevnej komedii (*Die soziale Lage des attischen Bauerntums im Spiegel der Fragmente der Alten Komödie*). (Behandelt die Herkunft der Komödie nach den Angaben des Aristoteles und sieht in den Invektiven der ursprünglichen Bauerngesänge ein immer stärker werdendes Zeichen des Protestes der Bauern gegen ihre reichen Ausbeuter. Damit wurde die Komödie in das im 6. Jh. in Athen tobende erbitterte Ringen zwischen der ‚reaktionären Geschlechter-Aristokratie‘ und den Kräften der ‚sich erhebenden Demokratie‘ eingespannt; freilich bleibt ‚die Geschichte der Komödie bis zur Mitte des 5. Jh.s fast unbekannt‘. Der Vf. versucht aber, aus erhaltenen Fragmenten diese Tendenz an den Ausfällen gegen Perikles, Kleon usw. im einzelnen zu erweisen. Auch nach dem Peloponnesischen Kriege nehme die Komödie mit „anti-plutokratischer Thematik“ an der politischen Auseinandersetzung teil; sie trete entschieden gegen Demagogen, aber auch gegen Aristokraten und Oligarchen auf und stelle sich damit gegen die „Sklavenausbeuter“). — 47/69 A. R. Korsunskij: O položenii rabov, vol'nootpuščennikov i kolonov v zapadnych provincijach Rimskoj Imperii v IV—V vekach (*Zur Lage der Sklaven, Freigelassenen und Kolonen in den westlichen Provinzen des Römischen Reiches im 4. und 5. Jh.*) (Will die Entwicklung dieser Bevölkerungsklassen im Sinne der „marxistischen Theorie vom gesetzmäßigen Übergang von der sklavenhaltenden zur feudalistischen Gesellschaft“ betrachten. Als Quellen dienen ihm

¹ Die Vorbemerkungen in HISTORIA I/2, 1950, S. 336, Anm. 1 und 2, gelten auch hier. — Der Aufsatz A. B. Ranovičs: *Hauptprobleme der Geschichte des Hellenismus*, in VDI 1949/I, S. 11/28 (vgl. HISTORIA I/2, 1950, 341 unten f.), ist in einer Übersetzung von Otto Mehlitz in der Ztschr. „Sowjetwissenschaft. Gesellschaftswissenschaftliche Abt.“ 1954/VI, S. 838/58, erschienen.

² Zu Einzelheiten dieser Erörterung vgl. Arnold Klees: *Streit um Chinas Geschichtsperioden*, in der Zeitschr. „Ost-Europa“ V/1 (Febr. 1953), S. 14—16.

Gesetzeserlasse aller Art, ferner literarische Schilderungen von Einheimischen, die freilich kein lückenloses Bild geben. Der Aufsatz setzt sich mit einer Darstellung V. S. Sergeevs von 1938 [Očerki po istorii drevnego Rima = *Skizzen zur Geschichte von Alt-Rom*, Band II] und mit einem Aufsatz E. M. Steuermanns in VDI 1953/II, S. 51/79 [vgl. HISTORIA II/3, 1954, S. 374 oben] auseinander. Das antike Sklavenwesen starb nur sehr langsam ab und war beim Untergang des Reiches keineswegs erloschen, spielte damals vielmehr immer noch eine hervorragende Rolle. — Die Freigelassenen bildeten nach K. im späteren Kaiserreiche einen beträchtlichen Teil der Bevölkerung und waren auch als Cives Romani in ihrer Rechtsstellung noch beschränkt, wenn auch die wirtschaftliche Abhängigkeit von ihren früheren Herrn allmählich dahinschwand. — Über den Charakter des Kolonats besteht in der Sowjetforschung noch keine Einigkeit. Doch hält K. die Kolonen keinesfalls für freie Grundbesitzer. Wenn sie auch erblich auf ihrer Scholle saßen, so besaßen sie doch keinen Rechtstitel darauf und waren durch steigende Steuern in sozial bedrängter Lage. Die juristischen Quellen geben vielfach keine Auskunft über ihre Rechtsstellung, zeigen vielmehr oft nur Tendenzen des Rechtes an. In der Zeit nach dem Falle Roms hatten sich die Kolonen in eine besondere soziale Gruppe verwandelt, die in manchem den leibeigenen Bauern des Mittelalters glich, aber keine eigenen „Produktionsmittel“ besaß und im Westen keine eigene Organisation hatte.)

Kritik und Bibliographie: 70/114 (darunter Berichte über die folgenden sowjetischen und bulgarischen Werke: S. N. Bibikov: Rannetripol'skoe poselenie Luka-Vrubleveckaja na Dnestre = Die Siedlung L.-V. am Dnjestr aus der frühen Tripol'e-Zeit, Moskau 1953, 458 S., 116 Tafeln. // M. O. Kosven: Očerki istorii pervobytnoj kul'tury = Skizzen zur Geschichte der primitiven Kultur, Moskau 1953, 215 S. // M. S. Bodnarskij: Antičnaja geografija = Antike Geographie, ein Lesebuch, Moskau 1953, 368 S. // N. V. Anfimov: Drevnie poselenija Prikuban'ja v I tysjačeletii do n. è. i v pervye veka n. è. = Die alte Bevölkerung des Kubań-Gebietes im 1. Jahrt. v. Chr. und dem 1. Jhh. n. Chr., 1953, 77 S. // D. Dečev: Charakteristika na trakijskija ezik = Kennzeichnung der thrakischen Sprache, Sofia 1952, 136 S.).

Berichte und Mitteilungen: 115/28 I. N. Vinnikov: Zur Sprache der Schriftdenkmäler aus Nisā (südl. Turkmenistan). (Lehnt anhand der Neuanalyse einer bekannten sowie der Deutung 7 bisher unveröffentlichter Gefäß-Inschriften die parthische Lesung von I. M. und M. M. D'jakonov, V. A. Lifschitz sowie M. E. Masson ab und liest sie — nach dem Vorgange Walter Hennings bei den Aśoka-Inschriften von Lampāka — unter Verzicht auf ideogramatische Deutungen und „in voller Übereinstimmung mit der grammatischen Struktur“ aramäisch). — 129/42 O. V. Kudrjavcev: Die Quellen des Cornelius Tacitus und des Cassius Dio zur Geschichte der armenischen Feldzüge Corbulos (z. Zt. Neros; letztlich kommt dafür ein Bericht Corbulos in Frage, der von Cluvius Rufus und Plinius dem Älteren verwendet und zusammengefaßt worden ist). — 142/48 I. D. Amusin: Ein hellenistischer Ideolog der Sklaverei (Jesus ben Sirach). — 148/49 I. I. Tolstoj: Zur Bedeutung des Wortes τνατῶν in der Inschrift von Gortyn (danach „Vieh“, nicht „Sklave“). — 149/51 P. V. Järnstedt („Ernstēdēt"): Das „reichlich bewässerte Ägypten“ bei Homer (diese Bedeutung habe εὐπόρετης neben „reichlich strömend“ [dann auf den Aigyptos = Nil bezogen]).

Veröffentlichungen: 152/73 Nikola Mavrodinov: Die Malerei des antiken Grabes von Kazanlyk (in Bulgarien; 1944 entdeckt: thrakische Architektur und griechische Malerei des 4. Jhs v. Chr., die für deren Anfänge sehr bedeutsam ist; mit zahlreichen Zeichnungen und Abbildungen). — 174/77 Chr. M. Danov: Zur Geschichte Thrakiens im 3. Jh. v. Chr. (Eine neue griechische Inschrift aus Mesembria; wichtig für die politisch-wirtschaftlichen Beziehungen der Städte am Westufer des Schwarzen Meeres zu den Thrakern). — Chronik: 178/80 Nachruf auf Boris Alekseevič Kuftin (1892—1953, mit

Schriftenverzeichnis, 16 Nrn.; erforschte die alte Kultur des Wolga-Raumes und Kaukasiens). — Beilage: 181/252 Erläuterte russische Übersetzung der „Epitoma Historiarum Philippicarum Pompei Trogi“ des M. Iunianus Iustinus.

1954/III: S. 9/20 V. N. Jarcho: Komedija Aristofana i Afinskaja demokratija (*Die Komödien des Aristophanes und die Athenische Demokratie*). (Versucht, die soziale Lage des attischen Bauerntums von hier aus zu beleuchten: Kritik der „sklavenhaltenden Gesellschaft“ und ihres Vertreters Kleon und anderer; Ablehnung der „bürgerlichen“ Auffassung; Interpretation einzelner Stellen in dem hier geforderten Sinne). — 21/32 S. L. Utčenko: Učenie Cicerona ob „ideal'nom graždanine“ (*Ciceros Lehre vom „Vir bonus“*). (Cic. verkannte die politische Lage ausgangs seines Lebens völlig: es war lediglich ein Bündnis der Caesarianer mit den Legionären, denen alle Ideale wie „res publica libera“ nichts bedeuteten. Cic. letzte Schriften spiegeln seine Auffassungen deutlich wider: ihre Auffassung des „Vir bonus“, des „καλόν“, „καθῆκον“ und „honestum“ und die Begriffe „iustitia“ und „beneficentia“ werden erläutert und die Bedeutung der Auffassungen des Panaitios und des Antiochos von Askalon für sie erörtert. — Ciceros Auffassung vom „Vir bonus“ ist ein Bestandteil seiner Staatstheorie, die die ethische Auffassung der Stoiker im Geiste der sog. 3. Akademie wiedergibt. „Politisch ist sein ‚Vir bonus‘ derjenige, der die sklavenhaltend-ausbeuterische Gesellschaft“ verteidigt und stützt). — 33/44 S. I. Kovalëv: K voprosu o charaktere social'nogo perevorota III—V vv. v zapadnoj Rimskoj Imperii (*Zum Gepräge des sozialen Umsturzes im Westen des Römischen Reiches im 3./5. Jh.*). (Setzt die Erörterung dieses Fragenkreises aus früheren Nummern des VDI fort. — Die bisherigen Beiträge hätten die Einordnung der Zustände dieser Zeit in das marxistisch-leninistische Geschichtsbild über Gebühr vernachlässigt. Der Vf. überblickt die Tatsachen und Entwicklungen dieser Epoche erneut unter diesem Gesichtswinkel: es handle sich um eine soziale Revolution gegen die sklavenhaltende Gesellschaft). — 45/70 M. E. Matthieu (? „Mat'e"): Iz istorii sem'i i roda v drevnem Egipte (*Zur Geschichte der Familie und Sippe im alten Ägypten*). (Untersucht die ägyptischen Verwandtschaftsbezeichnungen und ihre Bedeutung im einzelnen: sie weisen auf Überreste des Matriarchats hin, wie sie auch in religiösen Vorstellungen z. T. durchscheinen. Doch sei in historischer Zeit die Frau dem Manne bereits voll untergeordnet.)

Kritik und Bibliographie 76/121 (angezeigt werden u. a. folgende sowjetische, bulgarische und polnische Bücher: V. I. Avdiev: Istorija drevnego Vostoka = Geschichte des alten Orients, 2. Aufl., 1953, 758 S. // G. A. Melik'išvili: Urartu = Urartu, wissenschaftlich-volkstümliche Skizze zur Geschichte der Vorfahren des georgischen Volkes (georgisch und russisch), Tiflis 1951 bzw. 1952, 52 S. // I. M. Tronskij: Očerki iz istorii latinskogo jazyka = Skizzen aus der Geschichte der lateinischen Sprache, Moskau u. Leningrad 1953 // Neue Arbeiten zur Geschichte der Steinzeit in der UdSSR // Vladimir Georgiev: Problemy minojnskogo jazyka, Sofia 1953, 193 S. // T. Zawadzki: Z zagadnień struktury agrarno-społecznej krajów małoazjatyckich w epoce hellenizmu = Zur Frage der agrar-wirtschaftlichen Struktur der kleinasiatischen Gebiete in hellenistischer Zeit, Posen 1952, 80 S.).

Berichte und Mitteilungen: 122/32 S. Ja. Lur'e: Zum politischen Kampfe in Athen ausgangs des 5. Jh.s (Die „Andromache“ des Euripides und die „Lysistrata“ des Aristophanes können nur bei richtiger Datierung als Quelle zu diesem Thema ausgenutzt werden; die Widerspiegelung zeitgenössischer Ereignisse in diesen Werken). — 132/38 N. N. Belova: Epigraphische Angaben über Sklavenbesitz im römischen Gallien (Einschlägige Stellen zeigen das Weiterleben keltischer Einrichtungen [vernae] und das Erstarken des römischen Einflusses). — 138/51 Z. A. Mišina: Archäologische Entdeckungen und Untersuchungen in der Tschechoslowakei 1948/53 (nützliche Übersicht).

Veröffentlichungen: 152/80 V. V. Kropotkin: Topographie römischer und frühbyzantinischer Münzen auf dem Gebiete der UdSSR (mit verschiedenen Tabellen, Fund-

karten und einem genauen Fundverzeichnis als Unterlage für eine Auswertung zur Geschichte des nördlichen Ufergebietes des Schwarzen Meeres im 3. Jh. n. Chr. Das Verzeichnis enthält Nachträge und Verbesserungen zu VDI 1951/IV, S. 241/81 [HISTORIA II/3, 1954, S. 369 unten] und weist etwa 150 neue Fundorte nach; mit alphabetischem Orts-Verzeichnis und Bibliographie). — 181/90 Chronik: Geburtstagswunsch / Neue Ausstellungen / *Nachruf* auf Michail Michajlovič D'jakonov (1907—1954; Iranist und mittelasiatischer Archäologe). — Beilage 191/251: *Fortsetzung* der erläuterten russ. Übersetzung von Justins „Epitoma“ aus Heft II.

1954/IV: S. 9–40 Sergej Ivanovič Sobolevskij¹: Raby v komedijach Aristofana kak literaturnyj tip (*Die Sklaven in den Komödien des Aristophanes als literarischer Typ*) (behandelt die Frage nach der Lebenswahrheit des dargestellten Typs: bei Aristophanes komme nur eine realistische Behandlung in Frage. Freilich erschweren die – infolge der unzureichenden Kennzeichnung in den Handschriften – verwirrten Personenverhältnisse bei Dialogen gelegentlich eine Klärung. – In der neueren attischen Komödie spielen die Sklaven eine wesentlich größere Rolle als in der älteren; bei Aristophanes sind hierfür nur die „Frösche“ und der „Plutos“ von Bedeutung. Der Vf. erörtert nun die Frage der völkischen Herkunft der Sklaven in der Wirklichkeit und bei Aristophanes: hier werden sie vielfach als Griechen oder mit griechischem Wesen völlig vertraut vorgeführt, doch kommen gebrandmarkte Sprachfehler vor. Weiter handelt S. von den Sklavennamen und deren Bedeutung, vom Bildungsstande der Sklaven, von der Lage der im Hause geborenen Sklaven und ihre Stellung. Es folgt eine Übersicht über die mutmaßliche Zahl der Sklaven in Attika, über ihre Beschäftigungen und die Arten ihrer Bestrafung. Ausführlich werden anhand von Zitaten das Verhältnis von Sklaven und Herren sowie ihre „guten Eigenschaften“ erörtert. Abschließend bietet S. eine Übersicht über die Darstellung der Sklaven in der älteren dramatischen Literatur; Unterschiede zwischen Aischylos, Sophokles und Euripides. Die Entwicklung des Typs des „schlau und durchtriebenen Sklaven“. Menander als Abschluß einer langen Entwicklung). — 41–51 A. I. Tjumenev: K voprosu ob etnogeneze grečeskoga naroda (*Zur Volkwerdung des griechischen Volkes*²) (versucht, auf Grund der Forschungen von A. Thumb, Fr. Bechtel und C. D. Buck aus der späteren dialektischen Gliederung Schlüsse auf die früheren Bevölkerungsverhältnisse zu ziehen. Den Beschluß bildet eine Übersicht über die verschiedenen Deutungsversuche der mykenischen Inschriften). — 52–71 Ja. A. Lenzmann: Poslegomerovskij épos kak istočnik dlja social'no-ekonomičeskoj istorii rannej Grecii (*Das nach-homerische Epos als Quelle der Sozial- und Wirtschaftsgeschichte Früh-Griechenlands*) (bejaht die Möglichkeit einer Zusammenfassung verschiedener Epen zum Zwecke einer geschichtlichen Untersuchung, stammten sie doch alle aus der besonders wichtigen Periode des 8. bis frühen 6. Jh.s v. Chr. Von Bedeutung seien vor allem Hesiods „Ἔργα καὶ ἡμέραι“, daneben auch die Theogonie; gerade in den „volksdemokratischen“ Ländern, weniger im Rätebunde selbst, sei deren Bedeutung erkannt worden. Die Zahl der Verse mit wirtschaftlichen Angaben sei zwar verhältnismäßig gering, doch werde die Frage der „Armut“ häufig behandelt. Es folgt nun eine Einzelinterpretation der entsprechenden Stellen bei Hesiod. Dabei wird die Frage der Entwicklung der „Sklavenwirtschaft“ im Sinne der marxistischen Geschichtstheorie behandelt; freilich sei das historische Material noch nicht allseitig erforscht. Anschließend werden die einzelnen Termini für die Sklaven besprochen³. „Auch ein skizzenhafter Überblick der Entwicklung von Homer zu Hesiod läßt die kennzeichnenden Züge einer sich

¹ Anlässlich des 90. Geburtstages des Vf.s findet sich hier S. 181f. eine Glückwunschartadresse.

² Zur Bedeutung der „Etnogenese“ nach sowjetischer Auffassung vgl. HISTORIA III/2, (1954), S. 254, Anm. 2.

³ Vgl. auch VDI 1951/II, S. 47–69 = HISTORIA II/1, 1953, S. 124 Mitte.

rasch durchsetzenden ‚Sklavenhalter-Gesellschaft‘ deutlich werden“.). – 72–74 M. L. Gelzer (Reval): *Novye dannye o social'noj strukture Ugarita* (Neue Angaben zu Ugarits Sozialstruktur) (Bekanntwerden eines „Versammlungshauses“ in einem Dorfe; die wirtschaftliche Lage von dessen Bewohnern; die Stellung der „Marianni“-Klasse). – 75–83 A. G. Hemp (? ,Gemp'): *Tributarii i inkviliny pozdnej Rimskoj Imperii* (Die Tributarii und Inquilini im späten Römischen Reiche) (4./5. Jh. n. Chr.: Auseinandersetzung mit E. M. Steuermann in VDI 1953/II, S. 51–79 [HISTORIA II/3, 1954, S. 374 oben]). Auf Grund der Quellenbelege könne man nicht von einer Überwindung der ‚sklavenhaltenden Gesellschaft‘ und einer schon ‚feudalistischen‘ sprechen. Es hätten sich lediglich im Rahmen der ‚sklavenhaltenden Gesellschaft‘ neue Formen entwickelt. Abschließend erörtert H. das Verhältnis von Tributarius und Colonus: deren Stellung war im 4. Jh. noch nicht die von Freien. Die Inquilini des 3. Jhs seien als freie Pächter immer noch von der Gewalt des Pater familias abhängig gewesen. – Bei dieser Auseinandersetzung werden verschiedentlich die wenigen vorhandenen Quellenstellen sehr stark gepreßt). – 84f. K. M. Kolobova: *Dopolnenie k stat'e „Položenie gorodov v Bosporskom gosudarstve“* (Ergänzung zu dem Aufsatz „Die Lage der Städte im Bosporanischen Reiche“) (VDI 1953/IV, S. 47–71 [HISTORIA III/2, 1954, S. 254 unten f.]; Einzelinterpretation einer Inschrift).

Kritik und Bibliographie S. 85–122 (behandelt folgende sowjetische Veröffentlichungen: Kamilla V. Trever: *Očerki po istorii kul'tury drevnej Armenii* [Skizzen zur Kulturgeschichte Alt-Armeniens], Moskau und Leningrad 1953. Izd. AN SSSR. 288 S. // P. N. Tret'jakov: *Vostočnoslavjanskije plemena* [Die ost-slawischen Völker], 2. erw. Aufl., Moskau 1953. Izd. AN SSSR. 312 S. // Eine Chrestomathie, eine Übersichtsarbeit und Volkstümliches // ferner abendländische Arbeiten: F. K. Kienitz, das Ägyptische Wörterbuch, A. Robertson, V. Gordon Childe und M. Wheeler.

Berichte und Mitteilungen: 132–43 Sja Naj: *Die Lage der Archäologie im heutigen China* (Übersicht über ihre staatliche Pflege, über Ausgrabungen [mit Abb.] und Pläne). – 143–46 M. M. Kublanov: *Zur eingeborenen Geschichtschreibung im Bosporanischen Reiche* (Der Siegerkatalog von Gorgippion an der Stelle des heutigen Anapa; seit 1895 bekannt). – 146–50 E. A. Symonovič: *Alt-Odessa* (Vermutungen über die Lage von Odessos anhand einer – noch nicht abgeschlossenen – Grabung: vielleicht am Westufer des Tiligul-Limans?) – 150–58 L. M. Gluskina: *Äsop und die anti-delphische Opposition im 6. Jh. v. Chr.* (Die diesbezügliche Einschätzung Äsops durch die antiken Autoren und deren Zuverlässigkeit: in der Tat hat auf Samos im 6. Jh. v. Chr. offenbar eine feindliche Stimmung gegen die delphische Priesterschaft bestanden).

Veröffentlichungen: 159–69 M. E. Masson und G. A. Pugačenkova: *Abdrucke parthischer Siegel aus Nisā* (Zusammenstellung alter und neuer parthischer Funde – mit Abb. – und deren Einordnung in das antike Gemmen-Material; die Bedeutung einzelner Stücke). – 169–73 Michail Michajlovic D'jakonov †: *Aufschriften auf parthischen Siegeln aus Alt-Nisā* (Übersicht über einzelne Stücke und Tafel des hier im 1. Jh. v. Chr. gebrauchten aramäisch-parthischen Alphabets). – 173–75 I. Marčenko: *Zu antiken Geweben aus Pflanzenfasern* (vom Nordrande des Schwarzen Meeres; 4./2. Jh. v. Chr.). – 176–79 P. D. Liberov: *Ausgrabungen sog. „Kutschugure“ am unteren Dnjepr 1952/53* (aus der größten skythischen Siedlung dieser Gegend: eine bedeutsame, noch nicht völlig freigelegte Handelsmetropole: Funde von Feilen, Pfeilspitzen, Angelhaken; Keramik, Bronze-Arm-bänder). – 180–84 *Drei Geburtstags-Adressen*.

Beilage: S. 185–229 M. Iuniani *Iustini: Epitoma historiarum Philippicarum Pompei Trogi* in russ. Übersetzung mit Anm. (Fortsetzung aus dem vorhergehenden Hefte).

Die dogmatischen Denkformen in den Geisteswissenschaften und das Problem des Historismus

Abhandlung der Akademie der Wissenschaften und der Literatur

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Die Ilias scheint, wenn sie vom Schicksal der belagerten und zum Untergang bestimmten Stadt Troja erzählt, dichtend Ereignisse älterer Zeit, in der Eroberer die Frauen aus gewonnenen Städten zu Gattinnen nahmen, nachdem sie die Angehörigen getötet hatten, mit Begebenheiten jüngerer Zeit zu verknüpfen, in der solche Frauen mit ihren Kindern zu Sklaven der Sieger wurden. Männer, die man noch während des Kampfes fing, löste man zunächst um Gegengabe aus, verkaufte sie später auch übers Meer in die Fremde. Ein ausgebildeter Sklavenstand erscheint in der Ilias nicht, wohl aber in der Odyssee, wo der Sklave, der nun durch Raub oder Kauf erworben wird, ein bestimmt geprägtes Wesen zeigt und im täglichen Leben eine wichtige Rolle spielt.

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